

## Calendar No. 497

106TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 106-267

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### VALLES CALDERA PRESERVATION ACT

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APRIL 12, 2000.—Ordered to be printed

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Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

### REPORT

[To accompany S. 1892]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1892) to authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

### **TITLE I—VALLES CALDERA NATIONAL PRESERVE AND TRUST**

#### **SEC. 101. SHORT TITLE.**

This title may be cited as the “Valles Caldera Preservation Act”.

#### **SEC. 102. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) the Baca ranch comprises most of the Valles Caldera in central New Mexico, and constitutes a unique land mass, with significant scientific, cultural, historic, recreational, ecological, wildlife, fisheries, and productive values;

(2) the Valles Caldera is a large resurgent lava dome with potential geothermal activity;

(3) the land comprising the Baca ranch was originally granted to the heirs of Don Luis Maria Cabeza de Vaca in 1860;

(4) historical evidence, in the form of old logging camps and other artifacts, and the history of territorial New Mexico indicate the importance of this land over many generations for domesticated livestock production and timber supply;

(5) the careful husbandry of the Baca ranch by the current owners, including selective timbering, limited grazing and hunting, and the use of prescribed fire, have preserved a mix of healthy range and timber land with significant species diversity, thereby serving as a model for sustainable land development and use;

(6) the Baca ranch's natural beauty and abundant resources, and its proximity to large municipal populations, could provide numerous recreational opportunities for hiking, fishing, camping, cross-country skiing, and hunting;

(7) the Forest Service documented the scenic and natural values of the Baca ranch in its 1993 study entitled "Report on the Study of the Baca Location No. 1, Santa Fe National Forest, New Mexico", as directed by Public Law 101-556;

(8) the Baca ranch can be protected for current and future generations by continued operation as a working ranch under a unique management regime which would protect the land and resource values of the property and surrounding ecosystem while allowing and providing for the ranch to eventually become financially self-sustaining;

(9) the current owners have indicated that they wish to sell the Baca ranch, creating an opportunity for Federal acquisition and public access and enjoyment of these lands;

(10) certain features on the Baca ranch have historical and religious significance to Native Americans which can be preserved and protected through Federal acquisition of the property;

(11) the unique nature of the Valles Caldera and the potential uses of its resources with different resulting impacts warrants a management regime uniquely capable of developing an operational program for appropriate preservation and development of the land and resources of the Baca ranch in the interest of the public;

(12) an experimental management regime should be provided by the establishment of a Trust capable of using new methods of public land management that may prove to be cost-effective and environmentally sensitive; and

(13) the Secretary may promote more efficient management of the Valles Caldera and the watershed of the Santa Clara Creek through the assignment of purchase rights of such watershed to the Pueblo of Santa Clara.

(b) PURPOSES.—The purposes of this title are—

(1) to authorize Federal acquisition of the Baca ranch;

(2) to protect and preserve for future generations the scientific, scenic, historic, and natural values of the Baca ranch, including rivers and ecosystems and archaeological, geological, and cultural resources;

(3) to provide opportunities for public recreation;

(4) to establish a demonstration area for an experimental management regime adapted to this unique property which incorporates elements of public and private administration in order to promote long term financial sustainability consistent with the other purposes enumerated in this subsection; and

(5) to provide for sustained yield management of Baca ranch for timber production and domesticated livestock grazing insofar as is consistent with the other purposes stated herein.

#### SEC. 103. DEFINITIONS.

In this title:

(1) BACA RANCH.—The term "Baca ranch" means the lands and facilities described in this section 104(a).

(2) BOARD OF TRUSTEES.—The terms "Board of Trustees" and "Board" mean the Board of Trustees as describe in section 107.

(3) COMMITTEES OF CONGRESS.—The term "Committees of Congress" means the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(4) FINANCIALLY SELF-SUSTAINING.—The term "financially self-sustaining" means management and operating expenditures equal to or less than proceeds derived from fees and other receipts for resource use and development and interest on invested funds. Management and operating expenditures shall include Trustee expenses, salaries and benefits of staff, administrative and operating expenses, improvements to and maintenance of lands and facilities of the Preserve, and other similar expenses. Funds appropriated to the Trust by Congress, either directly or through the Secretary, for the purposes of this title shall not be considered.

(5) MULTIPLE USE AND SUSTAINED YIELD.—The term "multiple use and sustained yield" has the combined meaning of the terms "multiple use" and "sustained yield of the several products and services", as defined under the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 531).

(6) PRESERVE.—The term “Preserve” means the Valles Caldera National Preserve established under section 105.

(7) SECRETARY.—Except where otherwise provided, the term “Secretary” means the Secretary of Agriculture.

(8) TRUST.—The term “Trust” means the Valles Caldera Trust established under section 106.

**SEC. 104. ACQUISITION OF LANDS.**

(a) ACQUISITION OF BACA RANCH.—

(1) IN GENERAL.—In compliance with the Act of June 15, 1926 (16 U.S.C. 471a), the Secretary is authorized to acquire all or part of the rights, title, and interests in and to approximately 94,761 acres of the Baca ranch, comprising the lands, facilities, and structures referred to as the Baca Location No. 1, and generally depicted on a plat entitled “Independent Resurvey of the Baca Location No. 1”, made by L.A. Osterhoudt, W.V. Hall, and Charles W. Devendorf, U.S. Cadastral Engineers, June 30, 1920–August 24, 1921, under special instructions for Group No. 107 dated February 12, 1920, in New Mexico.

(2) SOURCE OF FUNDS.—The acquisition under paragraph (1) may be made by purchase through appropriated or donated funds, by exchange, by contribution, or by donation of land. Funds appropriated to the Secretary from the Land and Water Conservation Fund shall be available for this purpose.

(3) BASIS OF SALE.—The acquisition under paragraph (1) shall be based on an appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions and—

(A) in the case of purchase, such purchase shall be on a willing seller basis for no more than the fair market value of the land or interests therein acquired; and

(B) in the case of exchange, such exchange shall be for lands, or interests therein, of equal value, in conformity with the existing exchange authorities of the Secretary.

(4) DEED.—The conveyance of the offered lands to the United States under this subsection shall be by general warranty or other deed acceptable to the Secretary and in conformity with applicable title standards of the Attorney General.

(b) ADDITION OF LAND TO BANDELIER NATIONAL MONUMENT.—Upon acquisition of the Baca ranch under subsection (a), the Secretary of the Interior shall assume administrative jurisdiction over those lands within the boundaries of the Bandelier National Monument as modified under section 3 of Public Law 105–376 (112 Stat. 3389).

(c) PLAT AND MAPS.—

(1) PLAT AND MAPS PREVAIL.—In case of any conflict between a plat or a map and acreages, the plat or map shall prevail.

(2) MINOR CORRECTIONS.—The Secretary and the Secretary of the Interior may make minor corrections in the boundaries of the Upper Alamo watershed as depicted on the map referred to in section 3 of Public Law 105–376 (112 Stat. 3389).

(3) BOUNDARY MODIFICATION.—Upon the conveyance of any lands to any entity other than the Secretary, the boundary of the Preserve shall be modified to exclude such lands.

(4) FINAL MAPS.—Within 180 days of the date of acquisition of the Baca ranch under subsection (a), the Secretary and the Secretary of the Interior shall submit to the Committees of Congress a final map of the Preserve and a final map of Bandelier National Monument, respectively.

(5) PUBLIC AVAILABILITY.—The plat and maps referred to in the subsection shall be kept and made available for public inspection in the offices of the Chief, Forest Service, and Director, National Park Service, in Washington, D.C., and Supervisor, Santa Fe National Forest, and Superintendent, Bandelier National Monument, in the State of New Mexico.

(d) WATERSHED MANAGEMENT REPORT.—The Secretary, acting through the Forest Service, in cooperation with the Secretary of the Interior, acting through the National Park Service, shall—

(1) prepare a report of management alternatives which may—

(A) provide more coordinated land management within the area known as the upper watersheds of Alamo, Capulin, Medio, and Sanchez Canyons, including the areas known as the Dome Diversity Unit and the Dome Wilderness;

(B) allow for improved management of elk and other wildlife populations ranging between the Santa Fe National Forest and the Bandelier National Monument; and

(C) include proposed boundary adjustments between the Santa Fe National Forest and the Bandelier National Monument to facilitate the objectives under subparagraphs (A) and (B); and

(2) submit the report to the Committees of Congress within 120 days of the date of enactment of this title.

(e) **OUTSTANDING MINERAL INTERESTS.**—The acquisition of the Baca ranch by the Secretary shall be subject to all outstanding valid existing mineral interests. The Secretary is authorized and directed to negotiate with the owners of any fractional interest in the subsurface estate for the acquisition of such fractional interest on a willing seller basis for not to exceed its fair market value, as determined by appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions. Any such interests acquired within the boundaries of the Upper Alamo watershed, as referred to in subsection (b), shall be administered by the Secretary of the Interior as part of Bandelier National Monument.

(f) **BOUNDARIES OF THE BACA RANCH.**—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Baca ranch shall be treated as if they were National Forest boundaries existing as of January 1, 1965.

(g) **PUEBLO OF SANTA CLARA.**—

(1) **IN GENERAL.**—The Secretary may assign to the Pueblo of Santa Clara rights to acquire for fair market value portions of the Baca ranch. The portion that may be assigned shall be determined by mutual agreement between the Pueblo and the Secretary based on optimal management considerations for the Preserve including manageable land line locations, public access, and retention of scenic and natural values. All appraisals shall be done in conformity with the Uniform Appraisal Standards for Federal Land Acquisition.

(2) **STATUS OF LAND ACQUIRED.**—As of the date of acquisition, the fee title lands, and any mineral estate underlying such lands, acquired under this subsection by the Pueblo of Santa Clara are deemed transferred into trust in the name of the United States for the benefit of the Pueblo of Santa Clara and such lands and mineral estate are declared to be part of the existing Santa Clara Indian Reservation.

(3) **MINERAL ESTATE.**—Any mineral estate acquired by the United States pursuant to section 104(e) underlying fee title lands acquired by the Pueblo of Santa Clara shall not be developed without the consent of the Secretary of the Interior and the Pueblo of Santa Clara.

(4) **SAVINGS.**—Any reservations, easements, and covenants contained in an assignment agreement entered into under paragraph (1) shall not be affected by the acquisition of the Baca ranch by the United States, the assumption of management by the Valles Caldera Trust, or the lands acquired by the Pueblo being taken into trust.

**SEC. 105. THE VALLES CALDERA NATIONAL PRESERVE.**

(a) **ESTABLISHMENT.**—Upon the date of acquisition of the Baca ranch under section 104(a), there is hereby established the Valles Caldera National Preserve as a unit of the National Forest System which shall include all Federal lands and interests in land acquired under sections 104(a) and 104(e), except those lands and interests in land administered or held in trust by the Secretary of the Interior under sections 104(b) and 104(g), and shall be managed in accordance with the purposes and requirements of this title.

(b) **PURPOSES.**—The purposes for which the Preserve is established are to protect and preserve the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Preserve, and to provide for multiple use and sustained yield of renewable resources within the Preserve, consistent with this title.

(c) **MANAGEMENT AUTHORITY.**—Except for the powers of the Secretary enumerated in this title, the Preserve shall be managed by the Valles Caldera Trust established by section 106.

(d) **ELIGIBILITY FOR PAYMENT IN LIEU OF TAXES.**—Lands acquired by the United States under section 104(a) shall constitute entitlement lands for purposes of the Payment in Lieu of Taxes Act (31 U.S.C. 6901–6904).

(e) **WITHDRAWALS.**—

(1) **IN GENERAL.**—Upon acquisition of all interests in minerals within the boundaries of the Baca ranch under section 104(e), subject to valid existing

rights, the lands comprising the Preserve are thereby withdrawn from disposition under all laws pertaining to mineral leasing, including geothermal leasing.

(2) **MATERIALS FOR ROADS AND FACILITIES.**—Nothing in this title shall preclude the Secretary, prior to assumption of management of the Preserve by the Trust, and the Trust thereafter, from allowing the utilization of common varieties of mineral materials such as sand, stone, and gravel as necessary for construction and maintenance of roads and facilities within the Preserve.

(f) **FISH AND GAME.**—Nothing in this title shall be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, and trapping within the Preserve, except that the Trust may, in consultation with the Secretary and the State of New Mexico, designate zones where and establish periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, the protection of nongame species and their habitats, or public use and enjoyment.

(g) **REDONDO PEAK.**—

(1) **IN GENERAL.**—For the purposes of preserving the natural, cultural, religious, and historic resources on Redondo Peak upon acquisition of the Baca ranch under section 104(a), except as provided in paragraph (2), within the area of Redondo Peak above 10,000 feet in elevation—

(A) no roads, structures, or facilities shall be constructed; and

(B) no motorized access shall be allowed.

(2) **EXCEPTIONS.**—Nothing in this subsection shall preclude—

(A) the use and maintenance of roads and trails existing as of the date of enactment of this Act;

(B) the construction, use and maintenance of new trails, and the relocation of existing roads, if located to avoid Native American religious and cultural sites; and

(C) motorized access necessary to administer the area by the Trust (including measures required in emergencies involving the health or safety of persons within the area).

#### **SEC. 106. THE VALLES CALDERA TRUST.**

(a) **ESTABLISHMENT.**—There is hereby established a wholly owned government corporation known as the Valles Caldera Trust which is empowered to conduct business in the State of New Mexico and elsewhere in the United States in furtherance of its corporate purposes.

(b) **CORPORATE PURPOSES.**—The purposes of the Trust are—

(1) to provide management and administrative services for the Preserve;

(2) to establish and implement management policies which will best achieve the purposes and requirements of this title;

(3) to receive and collect funds from private and public sources and to make dispositions in support of the management and administration of the Preserve; and

(4) to cooperate with Federal, State, and local governmental units, and with Indian tribes and Pueblos, to further the purposes for which the Preserve was established.

(c) **NECESSARY POWERS.**—The Trust shall have all necessary and proper powers for the exercise of the authorities vested in it.

(d) **STAFF.**—

(1) **IN GENERAL.**—The Trust is authorized to appoint and fix the compensation and duties of an executive director and such other officers and employees as it deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay them without regard to the provisions of chapter 51, and subchapter III of chapter 53, title 5, United States Code, relating to classification and General Schedule pay rates. No employee of the Trust shall be paid at a rate in excess of that payable to the Supervisor of the Santa Fe National Forest or the Superintendent of the Bandelier National Monument, whichever is greater.

(2) **FEDERAL EMPLOYEES.**—

(A) **IN GENERAL.**—Except as provided in this title, employees of the Trust shall be Federal employees as defined by title 5, United States Code, and shall be subject to all rights and obligations applicable thereto.

(B) **USE OF FEDERAL EMPLOYEES.**—At the request of the Trust, the employees of any Federal agency may be provided for implementation of this title. Such employees detailed to the Trust for more than 30 days shall be provided on a reimbursable basis.

(e) **GOVERNMENT CORPORATION.**—

(1) IN GENERAL.—The Trust shall be a Government Corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act). Financial statements of the Trust shall be audited annually in accordance with section 9105 of title 31 of the United States Code.

(2) REPORTS.—Not later than January 15 of each year, the Trust shall submit to the Secretary and the Committees of Congress a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year including information on the status of ecological, cultural, and financial resources being managed by the Trust, and benefits provided by the Preserve to local communities. The report shall also include a section that describes the Trust's goals for the current year.

(3) ANNUAL BUDGET.—

(A) IN GENERAL.—The Trust shall prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the date of acquisition of the Baca ranch under section 104(a).

(B) BUDGET REQUEST.—The Secretary shall provide necessary assistance (including detailees as necessary) to the Trust for the timely formulation and submission of the annual budget request for appropriations, as authorized under section 111(a), to support the administration, operation, and maintenance of the Preserve.

(f) TAXES.—The Trust and all properties administered by the Trust shall be exempt from all taxes and special assessments of every kind by the State of New Mexico, and its political subdivisions including the counties of Sandoval and Rio Arriba.

(g) DONATIONS.—The Trust may solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other private or public entities for the purposes of carrying out its duties. The Secretary, prior to assumption of management of the Preserve by the Trust, and the Trust thereafter, may accept donations from such entities notwithstanding that such donors may conduct business with the Department of Agriculture or any other department or agency of the United States.

(h) PROCEEDS.—

(1) IN GENERAL.—Notwithstanding sections 1341 and 3302 of title 31 of the United States Code, all monies received from donations under subsection (g) or from the management of the Preserve shall be retained and shall be available, without further appropriation, for the administration, preservation, restoration, operation and maintenance, improvement, repair, and related expenses incurred with respect to properties under its management jurisdiction.

(2) FUND.—There is hereby established in the Treasury of the United States a special interest bearing fund entitled "Valles Caldera Fund" which shall be available, without further appropriation for any purpose consistent with the purposes of this title. At the option of the Trust, or the Secretary in accordance with section 110, the Secretary of the Treasury shall invest excess monies of the Trust in such account, which shall bear interest at rates determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturity.

(i) RESTRICTIONS ON DISPOSITION OF RECEIPTS.—Any funds received by the Trust, or the Secretary in accordance with section 109(b), from the management of the Preserve shall not be subject to partial distribution to the State under—

(1) the Act of May 23, 1908, entitled "an Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and nine" (35 Stat. 260, chapter 192; 16 U.S.C. 500);

(2) section 13 of the Act of March 1, 1911 (36 Stat. 963, chapter 186; 16 U.S.C. 500); or

(3) any other law.

(j) SUITS.—The Trust may sue and be sued in its own name to the same extent as the Federal Government. For purposes of such suits, the residence of the Trust shall be the State of New Mexico. The Trust shall be represented by the Attorney General in any litigation arising out of the activities of the Trust, except that the Trust may retain private attorneys to provide advice and counsel.

(k) BYLAWS.—The Trust shall adopt necessary bylaws to govern its activities.

(l) INSURANCE AND BOND.—The Trust shall require that all holders of leases from, or parties in contract with, the Trust that are authorized to occupy, use, or develop properties under the management jurisdiction of the Trust, procure proper insurance against any loss in connection with such properties, or activities authorized in such lease or contract, as is reasonable and customary.

(m) **NAME AND INSIGNIA.**—The Trust shall have the sole and exclusive right to use the words “Valles Caldera Trust”, and any seal, emblem, or other insignia adopted by the Board of Trustees. Without express written authority of the Trust, no person may use the words “Valles Caldera Trust” as the name under which that person shall do or purport to do business, for the purpose of trade, or by way of advertisement, or in any manner that may falsely suggest any connection with the Trust.

**SEC. 107. BOARD OF TRUSTEES.**

(a) **IN GENERAL.**—The Trust shall be governed by a 9-member Board of Trustees consisting of the following:

(1) **VOTING TRUSTEES.**—The voting Trustees shall be—

(A) the Supervisor of the Santa Fe National Forest, United States Forest Service;

(B) the Superintendent of the Bandelier National Monument, National Park Service; and

(C) 7 individuals, appointed by the President, in consultation with the congressional delegation from the State of New Mexico. The 7 individuals shall have specific expertise or represent an organization or government entity as follows—

(i) one trustee shall have expertise in aspects of domesticated livestock management, production, and marketing, including range management and livestock business management;

(ii) one trustee shall have expertise in the management of game and nongame wildlife and fish populations, including hunting, fishing, and other recreational activities;

(iii) one trustee shall have expertise in the sustainable management of forest lands for commodity and noncommodity purposes;

(iv) one trustee shall be active in a nonprofit conservation organization concerned with the activities of the Forest Service;

(v) one trustee shall have expertise in financial management, budget and program analysis, and small business operations;

(vi) one trustee shall have expertise in the cultural and natural history of the region; and

(vii) one trustee shall be active in State or local government in New Mexico, with expertise in the customs of the local area.

(2) **QUALIFICATIONS.**—Of the trustees appointed by the President—

(A) none shall be employees of the Federal Government; and

(B) at least five shall be residents of the State of New Mexico.

(b) **INITIAL APPOINTMENTS.**—The President shall make the initial appointments to the Board of Trustees within 90 days after acquisition of the Baca ranch under section 104(a).

(c) **TERMS.**—

(1) **IN GENERAL.**—Appointed trustees shall each serve a term of 4 years, except that of the trustees first appointed, 4 shall serve for a term of 4 years, and 3 shall serve for a term of 2 years.

(2) **VACANCIES.**—Any vacancy among the appointed trustees shall be filled in the same manner in which the original appointment was made, and any trustee appointed to fill a vacancy shall serve for the remainder of that term for which his or her predecessor was appointed.

(3) **LIMITATIONS.**—No appointed trustee may serve more than 8 years in consecutive terms.

(d) **QUORUM.**—A majority of trustees shall constitute a quorum of the Board for the conduct of business.

(e) **ORGANIZATION AND COMPENSATION.**—

(1) **IN GENERAL.**—The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the activities of the Trust.

(2) **COMPENSATION OF TRUSTEES.**—Trustees shall serve without pay, but may be reimbursed from the funds of the Trust for the actual and necessary travel and subsistence expenses incurred by them in the performance of their duties.

(3) **CHAIR.**—Trustees shall select a chair from the membership of the Board.

(f) **LIABILITY OF TRUSTEES.**—Appointed trustees shall not be considered Federal employees by virtue of their membership on the Board, except for purposes of the Federal Tort Claims Act, the Ethics in Government Act, and the provisions of chapter 11 of title 18, United States Code.

(g) **MEETINGS.**—

(1) **LOCATION AND TIMING OF MEETINGS.**—The Board shall meet in sessions open to the public at least three times per year in New Mexico. Upon a majority vote made in open session, and a public statement of the reasons therefore, the

Board may close any other meetings to the public: *Provided*, That any final decision of the Board to adopt or amend the comprehensive management program under section 108(d) or to approve any activity related to the management of the land or resources of the Preserve shall be made in open public session.

(2) PUBLIC INFORMATION.—In addition to other requirements of applicable law, the Board shall establish procedures for providing appropriate public information and periodic opportunities for public comment regarding the management of the Preserve.

**SEC. 108. RESOURCE MANAGEMENT.**

(a) ASSUMPTION OF MANAGEMENT.—The Trust shall assume all authority provided by this title to manage the Preserve upon a determination by the Secretary, which to the maximum extent practicable shall be made within 60 days after the appointment of the Board, that—

- (1) the Board is duly appointed, and able to conduct business; and
- (2) provision has been made for essential management services.

(b) MANAGEMENT RESPONSIBILITIES.—Upon assumption of management of the Preserve under subsection (a), the Trust shall manage the land and resources of the Preserve and the use thereof including, but not limited to such activities as—

- (1) administration of the operations of the Preserve;
- (2) preservation and development of the land and resources of the Preserve;
- (3) interpretation of the Preserve and its history for the public;
- (4) management of public use and occupancy of the Preserve; and
- (5) maintenance, rehabilitation, repair, and improvement of property within the Preserve.

(c) AUTHORITIES.—

(1) IN GENERAL.—The Trust shall develop programs and activities at the Preserve, and shall have the authority to negotiate directly and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including without limitation, entities of Federal, State, and local governments, and consultation with Indian tribes and pueblos, as are necessary and appropriate to carry out its authorized activities or fulfill the purposes of this title. Any such agreements may be entered into without regard to section 321 of the Act of June 30, 1932 (40 U.S.C. 303b).

(2) PROCEDURES.—The Trust shall establish procedures for entering into lease agreements and other agreements for the use and occupancy of facilities of the Preserve. The procedures shall ensure reasonable competition, and set guidelines for determining reasonable fees, terms, and conditions for such agreements.

(3) LIMITATIONS.—The Trust may not dispose of any real property in, or convey any water rights appurtenant to the Preserve. The Trust may not convey any easement, or enter into any contract, lease, or other agreement related to use and occupancy of property within the Preserve for a period greater than 10 years. Any such easement, contract, lease, or other agreement shall provide that, upon termination of the Trust, such easement, contract, lease or agreement is terminated.

(4) APPLICATION OF PROCUREMENT LAWS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, Federal laws and regulations governing procurement by Federal agencies shall not apply to the Trust, with the exception of laws and regulations related to Federal Government contracts governing health and safety requirements, wage rates, and civil rights.

(B) PROCEDURES.—The Trust, in consultation with the Administrator of Federal Procurement Policy, Office of Management and Budget, shall establish and adopt procedures applicable to the Trust's procurement of goods and services, including the award of contracts on the basis of contractor qualifications, price, commercially reasonable buying practices, and reasonable competition.

(d) MANAGEMENT PROGRAM.—Within two years after assumption of management responsibilities for the Preserve, the Trust shall, in accordance with subsection (f), develop a comprehensive program for the management of lands, resources, and facilities within the Preserve to carry out the purposes under section 105(b). To the extent consistent with such purposes, such program shall provide for—

- (1) operation of the Preserve as a working ranch, consistent with paragraphs (2) through (4);
- (2) the protection and preservation of the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural and recreational values of the Preserve;

- (3) multiple use and sustained yield of renewable resources within the Preserve;
- (4) public use of and access to the Preserve for recreation;
- (5) renewable resource utilization and management alternatives that, to the extent practicable—
  - (A) benefit local communities and small businesses;
  - (B) enhance coordination of management objectives with those on surrounding National Forest System land; and
  - (C) provide cost savings to the Trust through the exchange of services, including but not limited to labor and maintenance of facilities, for resources or services provided by the Trust; and
- (6) optimizing the generation of income based on existing market conditions, to the extent that it does not unreasonably diminish the long-term scenic and natural values of the area, or the multiple use and sustained yield capability of the land.

(e) PUBLIC USE AND RECREATION.—

(1) IN GENERAL.—The Trust shall give thorough consideration to the provision of appropriate opportunities for public use and recreation that are consistent with the other purposes under section 105(b). The Trust is expressly authorized to construct and upgrade roads and bridges, and provide other facilities for activities including, but not limited to camping and picnicking, hiking, and cross country skiing. Roads, trails, bridges, and recreational facilities constructed within the Preserve shall meet public safety standards applicable to units of the National Forest System and the State of New Mexico.

(2) FEES.—Notwithstanding any other provision of law, the Trust is authorized to assess reasonable fees for admission to, and the use and occupancy of, the Preserve: *Provided*, That admission fees and any fees assessed for recreational activities shall be implemented only after public notice and a period of not less than 60 days for public comment.

(3) PUBLIC ACCESS.—Upon the acquisition of the Baca ranch under section 104(a), and after an interim planning period of no more than two years, the public shall have reasonable access to the Preserve for recreation purposes. The Secretary, prior to assumption of management of the Preserve by the Trust, and the Trust thereafter, may reasonably limit the number and types of recreational admissions to the Preserve, or any part thereof, based on the capability of the land, resources, and facilities. The use of reservation or lottery systems is expressly authorized to implement this paragraph.

(f) APPLICABLE LAWS.—

(1) IN GENERAL.—The Trust, and the Secretary in accordance with section 109(b), shall administer the Preserve in conformity with this title and all laws pertaining to the National Forest System, except the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (16 U.S.C. 1600 et seq.).

(2) ENVIRONMENTAL LAWS.—The Trust shall be deemed a Federal agency for the purposes of compliance with Federal environmental laws.

(3) CRIMINAL LAWS.—All criminal laws relating to Federal property shall apply to the same extent as on adjacent units of the National Forest System.

(4) REPORTS ON APPLICABLE RULES AND REGULATIONS.—The Trust may submit to the Secretary and the Committees of Congress a compilation of applicable rules and regulations which in the view of the Trust are inappropriate, incompatible with this title, or unduly burdensome.

(5) CONSULTATION WITH TRIBES AND PUEBLOS.—The Trust is authorized and directed to cooperate and consult with Indian tribes and pueblos on management policies and practices for the Preserve which may affect them. The Trust is authorized to allow the use of lands within the Preserve for religious and cultural uses by Native Americans and, in so doing, may set aside places and times of exclusive use consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996 (note)) and other applicable statutes.

(6) NO ADMINISTRATIVE APPEAL.—The administrative appeals regulations of the Secretary shall not apply to activities of the Trust and decisions of the Board.

(g) LAW ENFORCEMENT AND FIRE MANAGEMENT.—The Secretary shall provide law enforcement services under a cooperative agreement with the Trust to the extent generally authorized in other units of the National Forest System. The Trust shall be deemed a Federal agency for purposes of the law enforcement authorities of the Secretary (within the meaning of section 15008 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559g)). At the request of the Trust, the Secretary may provide fire presuppression, fire suppression, and rehabilitation services: *Pro-*

*vided*, That the Trust shall reimburse the Secretary for salaries and expenses of fire management personnel, commensurate with services provided.

**SEC. 109. AUTHORITIES OF THE SECRETARY.**

(a) **IN GENERAL.**—Notwithstanding the assumption of management of the Preserve by the Trust, the Secretary is authorized to—

(1) issue any rights-of-way, as defined in the Federal Land Policy and Management Act of 1976, of over 10 years duration, in cooperation with the Trust, including, but not limited to, road and utility rights-of-way, and communication sites;

(2) issue orders under and enforce prohibitions generally applicable on other units of the National Forest System, in cooperation with the Trust;

(3) exercise the authorities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1278, et seq.) and the Federal Power Act (16 U.S.C. 797, et seq.), in cooperation with the Trust;

(4) acquire the mineral rights referred to in section 104(e);

(5) provide law enforcement and fire management services under section 108(g);

(6) at the request of the Trust, exchange land or interests in land within the Preserve under laws generally applicable to other units of the National Forest System, or otherwise dispose of land or interests in land within the Preserve under Public Law 97-465 (16 U.S.C. 521c through 521i);

(7) in consultation with the Trust, refer civil and criminal cases pertaining to the Preserve to the Department of Justice for prosecution;

(8) retain title to and control over fossils and archaeological artifacts found within the Preserve;

(9) at the request of the Trust, construct and operate a visitors' center in or near the Preserve, subject to the availability of appropriated funds;

(10) conduct the assessment of the Trust's performance, and, if the Secretary determines it necessary, recommend to Congress the termination of the Trust, under section 110(b)(2); and

(11) conduct such other activities for which express authorization is provided to the Secretary by this title.

(b) **INTERIM MANAGEMENT.**—

(1) **IN GENERAL.**—The Secretary shall manage the Preserve in accordance with this title during the interim period from the date of acquisition of the Baca ranch under section 104(a) to the date of assumption of management of the Preserve by the Trust under section 108. The Secretary may enter into any agreement, lease, contract, or other arrangement on the same basis as the Trust under section 108(c)(1): *Provided*, That any agreement, lease, contract, or other arrangement entered into by the Secretary shall not exceed two years in duration unless expressly extended by the Trust upon its assumption of management of the Preserve.

(2) **USE OF THE FUND.**—All monies received by the Secretary from the management of the Preserve during the interim period under paragraph (1) shall be deposited into the "Valles Caldera Fund" established under section 106(h)(2), and such monies in the fund shall be available to the Secretary, without further appropriation, for the purpose of managing the Preserve in accordance with the responsibilities and authorities provided to the Trust under section 108.

(c) **SECRETARIAL AUTHORITY.**—The Secretary retains the authority to suspend any decision of the Board with respect to the management of the Preserve if he finds that the decision is clearly inconsistent with this title. Such authority shall only be exercised personally by the Secretary, and may not be delegated. Any exercise of this authority shall be in writing to the Board, and notification of the decision shall be given to the Committees of Congress. Any suspended decision shall be referred back to the Board for reconsideration.

(d) **ACCESS.**—The Secretary shall at all times have access to the Preserve for administrative purposes.

**SEC. 110. TERMINATION OF THE TRUST.**

(a) **IN GENERAL.**—The Valles Caldera Trust shall terminate at the end of the twentieth full fiscal year following acquisition of the Baca ranch under section 104(a).

(b) **RECOMMENDATIONS.**—

(1) **BOARD.**—

(A) If after the fourteenth full fiscal years from the date of acquisition of the Baca ranch under section 104(a), the Board believes the Trust has met the goals and objectives of the comprehensive management program under section 108(d), but has not become financially self-sustaining, the

Board may submit to the Committees of Congress, a recommendation for authorization of appropriations beyond that provided under this title.

(B) During the eighteenth full fiscal year from the date of acquisition of the Baca ranch under section 104(a), the Board shall submit to the Secretary its recommendation that the Trust be either extended or terminated including the reasons for such recommendation.

(2) SECRETARY.—Within 120 days after receipt of the recommendation of the Board under paragraph (1)(B), the Secretary shall submit to the Committees of Congress the Board's recommendation on extension or termination along with the recommendation of the Secretary with respect to the same and stating the reasons for such recommendation.

(c) EFFECT OF TERMINATION.—In the event of termination of the Trust, the Secretary shall assume all management and administrative functions over the Preserve, and it shall thereafter be managed as a part of the Santa Fe National Forest, subject to all laws applicable to the National Forest System.

(d) ASSETS.—In the event of termination of the Trust, all assets of the Trust shall be used to satisfy any outstanding liabilities, and any funds remaining shall be transferred to the Secretary for use, without further appropriation, for the management of the Preserve.

(e) VALLES CALDERA FUND.—In the event of termination, the Secretary shall assume the powers of the Trust over funds under section 106(h), and the Valles Caldera Fund shall not terminate. Any balances remaining in the fund shall be available to the Secretary, without further appropriation, for any purpose consistent with the purposes of this title.

**SEC. 111. LIMITATIONS ON FUNDING.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary and the Trust such funds as are necessary for them to carry out the purposes of this title for each of the 15 full fiscal years after the date of acquisition of the Baca ranch under section 104(a).

(b) SCHEDULE OF APPROPRIATIONS.—Within two years after the first meeting of the Board, the Trust shall submit to Congress a plan which includes a schedule of annual decreasing appropriated funds that will achieve, at a minimum, the financially self-sustained operation of the Trust within 15 full fiscal years after the date of acquisition of the Baca ranch under section 104(a).

**SEC. 112. GENERAL ACCOUNTING OFFICE STUDY.**

(a) INITIAL STUDY.—Three years after the assumption of management by the Trust, the General Accounting Office shall conduct an interim study of the activities of the Trust and shall report the results of the study to the Committees of Congress. The study shall include, but shall not be limited to, details of programs and activities operated by the Trust and whether it met its obligations under this title.

(b) SECOND STUDY.—Seven years after the assumption of management by the Trust, the General Accounting Office shall conduct a study of the activities of the Trust and shall report the results of the study to the Committees of Congress. The study shall provide an assessment of any failure to meet obligations that may be identified under subsection (a), and further evaluation on the ability of the Trust to meet its obligations under this title.

## **TITLE II—FEDERAL LAND TRANSACTION FACILITATION**

**SEC. 201. SHORT TITLE.**

This title may be cited as the “Federal Land Transaction Facilitation Act”.

**SEC. 202. FINDINGS.**

Congress finds that—

(1) the Bureau of Land Management has authority under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) to sell land identified for disposal under its land use planning;

(2) the Bureau of Land Management has authority under that Act to exchange Federal land for non-Federal land if the exchange would be in the public interest;

(3) through land use planning under that Act, the Bureau of Land Management has identified certain tracts of public land for disposal;

- (4) the Federal land management agencies of the Departments of the Interior and Agriculture have authority under existing law to acquire land consistent with the mission of each agency;
- (5) the sale or exchange of land identified for disposal and the acquisition of certain non-Federal land from willing landowners would—
  - (A) allow for the reconfiguration of land ownership patterns to better facilitate resource management;
  - (B) contribute to administrative efficiency within Federal land management units; and
  - (C) allow for increased effectiveness of the allocation of fiscal and human resources within the Federal land management agencies;
- (6) a more expeditious process for disposal and acquisition of land, established to facilitate a more effective configuration of land ownership patterns, would benefit the public interest;
- (7) many private individuals own land within the boundaries of Federal land management units and desire to sell the land to the Federal Government;
- (8) such land lies within national parks, national monuments, national wildlife refuges, national forests, and other areas designated for special management;
- (9) Federal land management agencies are facing increased workloads from rapidly growing public demand for the use of public land, making it difficult for Federal managers to address problems created by the existence of inholdings in many areas;
- (10) in many cases, inholders and the Federal Government would mutually benefit from Federal acquisition of the land on a priority basis;
- (11) proceeds generated from the disposal of public land may be properly dedicated to the acquisition of inholdings and other land that will improve the resource management ability of the Federal land management agencies and adjoining landowners;
- (12) using proceeds generated from the disposal of public land to purchase inholdings and other such land from willing sellers would enhance the ability of the Federal land management agencies to—
  - (A) work cooperatively with private landowners and State and local governments; and
  - (B) promote consolidation of the ownership of public and private land in a manner that would allow for better overall resource management;
- (13) in certain locations, the sale of public land that has been identified for disposal is the best way for the public to receive fair market value for the land; and
- (14) to allow for the least disruption of existing land and resource management programs, the Bureau of Land Management may use non-Federal entities to prepare appraisal documents for agency review and approval consistent with applicable provisions of the Uniform Standards for Federal Land Acquisition.

#### SEC. 203. DEFINITIONS.

In this title:

- (1) EXCEPTIONAL RESOURCE.—The term “exceptional resource” means a resource of scientific, natural, historic, cultural, or recreational value that has been documented by a Federal, State, or local governmental authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public.
- (2) FEDERALLY DESIGNATED AREA.—The term “federally designated area” means land in Alaska and the eleven contiguous Western States (as defined in section 103(o) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(o))) that on the date of enactment of this Act was within the boundary of—
  - (A) a national monument, area of critical environmental concern, national conservation area, national riparian conservation area, national recreation area, national scenic area, research natural area, national outstanding natural area, or a national natural landmark managed by the Bureau of Land Management;
  - (B) a unit of the National Park System;
  - (C) a unit of the National Wildlife Refuge System;
  - (D) an area of the National Forest System designated for special management by an Act of Congress; or

(E) an area within which the Secretary or the Secretary of Agriculture is otherwise authorized by law to acquire lands or interests therein that is designated as—

- (i) wilderness under the Wilderness Act (16 U.S.C. 1131 et seq.);
  - (ii) a wilderness study area;
  - (iii) a component of the Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or
  - (iv) a component of the National Trails System under the National Trails System Act (16 U.S.C. 1241 et seq.).
- (3) **INHOLDING.**—The term “inholding” means any right, title, or interest, held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area.
- (4) **PUBLIC LAND.**—The term “public land” means public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)).
- (5) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

**SEC. 204. IDENTIFICATION OF INHOLDINGS.**

(a) **IN GENERAL.**—The Secretary and the Secretary of Agriculture shall establish a procedure to—

- (1) identify, by State, inholdings for which the landowner has indicated a desire to sell the land or interest therein to the United States; and
- (2) prioritize the acquisition of inholdings in accordance with section 206(c)(3).

(b) **PUBLIC NOTICE.**—As soon as practicable after the date of enactment of this title and periodically thereafter, the Secretary and the Secretary of Agriculture shall provide public notice of the procedures referred to in subsection (a), including any information necessary for the consideration of an inholding under section 206. Such notice shall include publication in the Federal Register and by such other means as the Secretary and the Secretary of Agriculture determine to be appropriate.

(c) **IDENTIFICATION.**—An inholding—

- (1) shall be considered for identification under this section only if the Secretary or the Secretary of Agriculture receive notification of a desire to sell from the landowner in response to public notice given under subsection (b); and
- (2) shall be deemed to have been established as of the later of—

(A) the earlier of—

- (i) the date on which the land was withdrawn from the public domain; or
- (ii) the date on which the land was established or designated for special management; or

(B) the date on which the inholding was acquired by the current owner.

(d) **NO OBLIGATION TO CONVEY OR ACQUIRE.**—The identification of an inholding under this section creates no obligation on the part of a landowner to convey the inholding or any obligation on the part of the United States to acquire the inholding.

**SEC. 205. DISPOSAL OF PUBLIC LAND.**

(a) **IN GENERAL.**—The Secretary shall establish a program, using funds made available under section 206, to complete appraisals and satisfy other legal requirements for the sale or exchange of public land identified for disposal under approved land use plans (as in effect on the date of enactment of this Act) under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712).

(b) **SALE OF PUBLIC LAND.**—

(1) **IN GENERAL.**—The sale of public land so identified shall be conducted in accordance with sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1719).

(2) **EXCEPTIONS TO COMPETITIVE BIDDING REQUIREMENTS.**—The exceptions to competitive bidding requirements under section 203(f) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713(f)) shall apply to this section in cases in which the Secretary determines it to be necessary.

(c) **REPORT IN PUBLIC LAND STATISTICS.**—The Secretary shall provide in the annual publication of Public Land Statistics, a report of activities under this section.

(d) **TERMINATION OF AUTHORITY.**—The authority provided under this section shall terminate 10 years after the date of enactment of this Act.

**SEC. 206. FEDERAL LAND DISPOSAL ACCOUNT.**

(a) **DEPOSIT OF PROCEEDS.**—Notwithstanding any other law (except a law that specifically provides for a proportion of the proceeds to be distributed to any trust funds of any States), the gross proceeds of the sale or exchange of public land under

this Act shall be deposited in a separate account in the Treasury of the United States to be known as the "Federal Land Disposal Account".

(b) AVAILABILITY.—Amounts in the Federal Land Disposal Account shall be available to the Secretary and the Secretary of Agriculture, without further Act of appropriation, to carry out this title.

(c) USE OF THE FEDERAL LAND DISPOSAL ACCOUNT.—

(1) IN GENERAL.—Funds in the Federal Land Disposal Account shall be expended in accordance with this subsection.

(2) FUND ALLOCATION.—

(A) PURCHASE OF LAND.—Except as authorized under subparagraph (C), funds shall be used to purchase lands or interests therein that are otherwise authorized by law to be acquired, and that are—

(i) inholdings; and

(ii) adjacent to federally designated areas and contain exceptional resources.

(B) INHOLDINGS.—Not less than 80 percent of the funds allocated for the purchase of land within each State shall be used to acquire inholdings identified under section 204.

(C) ADMINISTRATIVE AND OTHER EXPENSES.—An amount not to exceed 20 percent of the funds deposited in the Federal Land Disposal Account may be used by the Secretary for administrative and other expenses necessary to carry out the land disposal program under section 205.

(D) SAME STATE PURCHASES.—Of the amounts not used under subparagraph (C), not less than 80 percent shall be expended within the State in which the funds were generated. Any remaining funds may be expended in any other State.

(3) PRIORITY.—The Secretary and the Secretary of Agriculture shall develop a procedure for prioritizing the acquisition of inholdings and non-Federal lands with exceptional resources as provided in paragraph (2). Such procedure shall consider—

(A) the date the inholding was established (as provided in section 204(c));

(B) the extent to which acquisition of the land or interest therein will facilitate management efficiency; and

(C) such other criteria as the Secretary and the Secretary of Agriculture deem appropriate.

(4) BASIS OF SALE.—Any land acquired under this section shall be—

(A) from a willing seller;

(B) contingent on the conveyance of title acceptable to the Secretary, or the Secretary of Agriculture in the case of an acquisition of National Forest System land, using title standards of the Attorney General;

(C) at a price not to exceed fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions; and

(D) managed as part of the unit within which it is contained.

(d) CONTAMINATED SITES AND SITES DIFFICULT AND UNECONOMIC TO MANAGE.—Funds in the Federal Land Disposal Account shall not be used to purchase land or an interest in land that, as determined by the Secretary or the Secretary of Agriculture—

(1) contains a hazardous substances or is otherwise contaminated; or

(2) because of the location or other characteristics of the land, would be difficult or uneconomic to manage as Federal land.

(e) LAND AND WATER CONSERVATION FUND ACT.—Funds made available under this section shall be supplemental to any funds appropriated under the Land and Water Conservation Fund Act (16 U.S.C. 4601–4 et seq.).

(f) TERMINATION.—On termination of activities under section 205—

(1) the Federal Land Disposal Account shall be terminated; and

(2) any remaining balance in the account shall become available for appropriation under section 3 of the Land and Water Conservation Fund Act (16 U.S.C. 4601–6).

#### SEC. 207. SPECIAL PROVISIONS.

(a) IN GENERAL.—Nothing in this title provides an exemption from any limitation on the acquisition of land or interest in land under any Federal Law in effect on the date of enactment of this Act.

(b) OTHER LAW.—This title shall not apply to land eligible for sale under—

(1) Public Law 96–568 (commonly known as the "Santini-Burton Act") (94 Stat. 3381); or

(2) the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343).

(c) EXCHANGES.—Nothing in this title precludes, preempts, or limits the authority to exchange land under authorities providing for the exchange of Federal lands, including but not limited to—

(1) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); or

(2) the Federal Land Exchange Facilitation Act of 1988 (102 Stat. 1086) or the amendments made by that Act.

(d) NO NEW RIGHT OR BENEFIT.—Nothing in this Act creates a right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person.

#### PURPOSE OF THE MEASURE

The purpose of S. 1892 is to authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes.

#### BACKGROUND AND NEED

Title I of S. 1892 authorizes the Secretary of Agriculture to acquire the Baca Ranch in New Mexico from its present owners. The bill also designates the property as the Valles Caldera National Preserve, and sets up an experimental management regime for its administration.

The Baca Ranch, historically referred to as the Baca Location No. 1, is based on an 1860 Congressional land grant. It comprises approximately 95,000 acres lying in the heart of the Jemez Mountains in northern New Mexico. Located near Los Alamos and within an hour's drive of Albuquerque and Santa Fe, the property is accessible to the large population centers in New Mexico.

The Baca Ranch exhibits remarkable scenic beauty and contains exceptional wildlife and fisheries resources. The headwaters of the Jemez Wild and Scenic River originate on the Baca Ranch, as well as San Antonio Creek, both of which have outstanding fishery resources. Wildlife abounds on the Baca Ranch including the largest elk herd in the southwest. The ranch is large enough and exhibits such a wide variety of land forms that it can provide opportunities for both recreation and solitude. Portions of the Baca Ranch have special religious and cultural significance for Native Americans residing in the region.

The land has a unique geological past. Over 1.2 million years ago, two major volcanic eruptions occurred, ejecting cubic miles of material into the atmosphere and creating the Valles Caldera, approximately 15 miles in diameter. The mountains surrounding the Valles Caldera rise to a height of 3,000 feet above the valley floor. Hot springs, gas vents and volcanic domes are present day evidence of this volcanic activity.

The Baca Ranch is one of the most significant privately owned inholdings within the National Forest System. It is surrounded by Federal land including the Santa Fe National Forest, the Jemez National Recreation Area, and the Bandelier National Monument. The Baca ties these lands together in a common ecosystem, and the management of the Ranch will directly impact the public resources on adjacent lands.

In 1993, with the Dunigan family's cooperation, the Forest Service conducted a study of the Ranch pursuant to the Congressional direction in Public Law 101-556. The 1993 study extensively examined the scenic, natural, recreational, and multiple use resources of the Baca Ranch, and provided the impetus for acquisition efforts when it became available for purchase in 1998. Congress authorized the expenditure of \$101 million in the FY 2000 Appropriations Act for the purchase of the Baca Ranch subject to specific authorizing legislation and completion of an appraisal.

Once acquired, the Baca Ranch will be administered as the Valles Caldera National Preserve. The Preserve will have many of the attributes of other Congressionally designated areas designed to assure the protection of important scenic and natural values. More uniquely, S. 1892 requires management of the property by trust, and requires the acquired Baca Ranch to continue to be managed as an operating ranch. The trust management concept is intended to protect the unique values of the property and demonstrate sustainable land use including recreation, grazing, forest management, hunting, and fishing while maintaining scenic, wildlife and species diversity. While the goal of the Trust will be to make the Ranch self-sufficient, the legislation prohibits unreasonable diminishment of scenic and natural values of the property.

Title II authorizes the Bureau of Land Management to improve land management activities and consolidate federal ownerships by selling parcels of Federal land identified through the agency's land use planning process as suitable for disposal. Title II requires that eighty percent of the proceeds from the sales be used to acquire inholdings from willing sellers and other non-Federal lands adjacent to designated areas in order to improve the resources management ability of the Federal land management agencies. A portion of the proceeds generated from the sales will become available to the Bureau of Land Management to carry out the land disposal program.

#### LEGISLATIVE HISTORY

S. 1892 was introduced on November 9, 1999 by Senators Domenici and Bingaman. The Subcommittee on Forests and Public Land Management held a hearing on S. 1892 on March 10, 2000. At the business meeting on April 5, 2000, the Committee on Energy and Natural Resources ordered S. 1892 reported favorably with an amendment in the nature of a substitute.

#### COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on April 5, 2000, by a majority voice vote of a quorum present with a majority of those present voting in favor recommends that the Senate pass S. 1892 if amended as described herein.

#### COMMITTEE AMENDMENTS

During the consideration of S. 1892, the Committee adopted an amendment in the nature of a substitute. In addition to making

numerous technical and clarifying changes, the amendment includes the following substantive provisions:

(1) Land acquired by the Santa Clara Pueblo pursuant to section 104(g) will be placed into trust status and development of the underlying mineral estate (if acquired by the United States) will be prohibited unless agreed to by the Pueblo and the Secretary.

(2) In order to protect significant Native American cultural sites, the construction of new roads, structures, or facilities above 10,000 feet in elevation on Redondo Peak is prohibited (section 105(g)).

(3) The Trust is provided with exclusive right to use the words "Valles Caldera Trust" and any seal, emblem, or other insignia adopted by the Board of Trustees, similar to authority recently granted to the Presidio Trust.

#### SECTION-BY-SECTION ANALYSIS

##### *Title I*

Section 101 contains the short title.

Section 102 presents findings.

Section 103 defines terms used in the Act.

Section 104(a) authorizes the Secretary to acquire the Baca Location No. 1 in New Mexico using funds appropriated from the Land and Water Conservation Fund. The subsection also requires that the acquisition be based on an appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions.

Subsection (b) requires that lands acquired within the boundary of the Bandelier National Monument (approximately 823 acres) will be administered by the Secretary of the Interior as part of the Monument.

Subsection (c) requires the preparation of maps of the Preserve and of the modified boundary of the Bandelier National Monument.

Subsection (d) requires that watershed and elk management reports be prepared by the Secretaries of Agriculture and Interior. This subsection states that the report be submitted to Congress within 120 days after enactment.

Subsection (e) states that acquisition of the Baca Ranch is subject to outstanding mineral interests. In addition, subsection (e) directs the Secretary of Agriculture to negotiate with the owners of the minority mineral interests in order to acquire those interests for an amount not to exceed fair market value.

The Committee expects that the Forest Service will engage in timely good-faith negotiations with the owners of the minority mineral interests with the intent of acquiring those interests for their fair market value. The Committee notes that as of March 2000, the Forest Service initiated contacts with some of the minority mineral owners to begin an appraisal of the outstanding minerals. In addition, the Forest Service has agreed to review and consider any and all data and information provided by the mineral owners regarding mineralization and geothermal resources on the Baca Ranch.

It is the Committee's expectation that the Forest Service and the minority mineral owners will proceed with the appraisal of the outstanding mineral rights and that the Forest Service will offer their owners the appraised fair market value. The Committee requests

quarterly reports from the Forest Service on the progress of the appraisal and status of any negotiations.

Subsection (f) defines the boundaries of the Baca Location No. 1 for purposes of section 7 of the Land and Water Conservation Fund Act.

Subsection (g) authorizes the Secretary of Agriculture to assign the right to purchase a portion of the Baca Ranch to the Pueblo of Santa Clara. The Committee understands that the Santa Clara and the Secretary of Agriculture have entered into an assignment contract dated February 7, 2000. The subsection also requires that lands and interests therein acquired by the Pueblo be transferred into trust in the name of the United States to be managed as part of the Santa Clara Indian Reservation. The subsection also states that any mineral estate acquired by the United States in the area shall not be developed without the consent of the Secretary of the Interior and the Pueblo of Santa Clara. Finally, the subsection requires that any access and conservation easements contained in the assignment contract will continue to exist after the acquisition of the Baca Ranch by the United States, the assumption of management by the Trust, and the transfer of the Pueblo lands into trust.

Section 105(a) establishes, upon acquisition of the Baca Ranch, the Valles Caldera National Preserve as a unit of the National Forest System.

Subsection (b) identifies the purposes for which the Preserve is established.

Subsection (c) requires the Preserve to be managed by the Valles Caldera Trust except for specified authorities of the Secretary.

Subsection (d) states that the lands acquired by the United States pursuant to section 104(a) shall constitute entitlement lands for purposes of the Payment in Lieu of Taxes Act.

Subsection (e) requires that upon acquisition of all interests in the minerals within the boundaries of the Preserve, the lands will be withdrawn from disposition under all laws pertaining to mineral leasing, including geothermal leasing. This subsection authorizes the Secretary and the Trust to use common varieties of mineral materials such as sand, stone, and gravel for the construction and maintenance of roads and facilities within the Preserve.

Subsection (f) provides for continuing authority of the State of New Mexico to regulate hunting, fishing, and trapping within the Preserve, except that the Trust may set aside times and places where such activities are prohibited for reasons of public safety, administration, species protection, and public use.

Subsection (g) severely restricts, for Native American religious purposes, construction of roads, structures, and facilities, on approximately 2,500 acres of land on Redondo Peak.

Section 106(a) establishes the Valles Caldera Trust, as a government corporation and separate legal entity, to manage the Preserve.

Subsection (b) and (c) specifies the purposes of the Trust and provides them with such powers as are necessary to exercise their authorities.

Subsection (d) authorizes the Trust to hire exemployees, as they deem necessary, sets limits on compensation, and states that those hired by the Trust shall be Federal employees except as otherwise

provided in this Title. This subsection also authorizes Federal agencies to detail employees to the Trust.

Subsection (e) requires the Trust to prepare financial statements and reports on activities and accomplishments for the prior year. The subsection also requires that annual budgets be prepared with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the date of acquisition of the Baca Ranch.

Subsection (f) exempts the Trust from all taxes and assessments by the State of New Mexico and its political subdivisions.

Subsection (g) allows the Trust and the Secretary to receive donations of funds, property, supplies, and services.

Subsection (h) provides that all monies, received from donations or from the management of the Preserve, be retained by the Trust and available for expenditure without further appropriation, for the management of the Preserve.

Subsection (i) exempts receipts generated through management of the Preserve from certain revenue-sharing laws.

Subsection (j) provides that the Trust can sue and be sued in its own name. This subsection also states that the Attorney General of the United States will represent the Trust in litigation; however, the Trust may retain private attorneys for advice and counsel.

Subsection (k) authorizes the Trust to adopt necessary bylaws to govern its activities.

Subsection (l) requires the Trust to ensure that all holders of leases, and those contracting with the Trust for the occupancy and use of the Preserve, be insured against any loss in connection with such activities.

Section 107(a) provides that the Trust be governed by a nine member Board of Trustees, seven of whom must have specific expertise and be appointed by the President. Two other members of the Board, the Supervisor of the Santa Fe National Forest and Superintendent of the Bandelier National Monument, are ex-officio.

Subsection (b) requires the President to make initial appointments to the Board within 90 days after acquisition of the Baca Ranch.

Subsection (c) requires that appointments to the Board be staggered so that there will be a partial turnover of membership every two years. This subsection also specifies that no Trustee may serve for more than 8 years in consecutive terms.

Subsection (d) provides that a majority of the Trustees shall constitute quorum of the Board in order to conduct business.

Subsection (e) provides that the Board can organize itself in whatever manner it deems appropriate for the conduct of business, including the selection of its own chair. This subsection also states that Trustees serve with no pay, but may be reimbursed for expenses.

Subsection (f) provides that, with identified exceptions, Trustees are not Federal employees.

Subsection (g) requires members of the Board to meet in public session at least three times per year in New Mexico, gives them the authority to enter into executive session except for specified purposes, and requires them to establish procedures for providing appropriate public information and opportunities for public comment.

Subsection 108(a) provides that the Trust will assume management authority over the Preserve upon a determination by the Secretary that the Board is duly appointed and that provision has been made for essential management services.

Subsection (b) directs the Trust to manage the land and resources of the Preserve. Natural resource management practices should consider standards and guidelines prescribed in existing legislation as it relates to grazing, forestry, and wildlife management practices.

Subsection (c) requires the Trust to develop programs and activities at the Preserve. In addition, this subsection provides that the Trust has the authority to enter into agreements, leases, contracts and other arrangements (such as setting fees, terms and conditions) for matters relating to the management of the Preserve. Finally, this subsection prohibits the Trust from disposing of real property or conveying water rights, or entering into contracts for a term greater than ten years.

Subsection (d) requires the Trust, within two years of assuming management responsibility for the Preserve, to develop a comprehensive program for the management of the Preserve. This subsection requires that the program meet the multiple objectives of a working ranch, preserve the values of the Preserve, allow public occupancy and use, multiple use management, and resource utilization that is compatible with local communities and the adjacent Federal lands.

The Committee expects that economic self-sufficiency is a goal of the Trust, and while optimizing the generation of income, it shall not interfere with good management principles or unreasonably diminish scenic and natural values of the area. The Trust should generate revenue while considering local needs. Reasonable and customary grazing fees, grass banking, and hunting fees are among the options the Trust may pursue within its management program.

Subsection (e) directs the Trust to give thorough consideration to public use and recreation that is consistent with the other purposes of the Preserve. This subsection also authorizes the Trust to build and maintain the infrastructure necessary to allow for public use and to charge reasonable fees for public admission and use.

Subsection (f) requires that the Trust administer the Preserve in accordance with all laws pertaining to the National Forest System, except the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

Paragraph (f)(2) deems the Trust to be a Federal agency for the purpose of complying with Federal environmental laws.

Paragraph (f)(3) specifies that criminal laws relating to Federal property shall apply to the Preserve to the same extent as on adjacent units of the National Forest System.

Paragraph (f)(4) provides that the Trust may submit to the Secretary and the appropriate committees of Congress, a compilation of applicable rules and regulations that the Trust views as inappropriate, incompatible or unduly burdensome.

Paragraph (f)(5) directs the Trust to consult with Indian tribes and pueblos on management practices that affect them and allows

the use of lands within the Preserve for religious and cultural uses consistent with the American Indian Religious Freedom Act.

Paragraph (f)(6) provides that no administrative appeal regulations of the Secretary will apply to activities of the Trust or decisions of the Board.

Subsection (g) requires the Secretary to provide law enforcement services pursuant to a cooperative agreement with the Trust. This subsection also authorizes the Secretary to use employees of the Trust for law enforcement if they have the requisite training. Finally, this subsection authorizes the Secretary to provide fire protection on a reimbursable basis.

Section 109(a) authorizes the Secretary to conduct the following activities with respect to the Preserve: issue rights of way over 10 years in duration; issue orders and enforce prohibitions generally applicable on other units of the National Forest Service in cooperation with the Trust; exercise authorities under the Wild and Scenic Rivers Act and the Federal Power Act; acquire mineral rights as authorized under section 104(e); provide law enforcement and fire management at the request of the Trust; exchange land within the Preserve at the request of the Trust; dispose of land pursuant to the Small Tracts Act; refer civil and criminal cases to the Department of Justice; retain fossils and archaeological artifacts; construct and operate a visitors' center; and assess the Trusts' performance.

Subsection (b) directs the Secretary to manage the Preserve during that time between the acquisition of the Baca Ranch and the time the Trust assumes management.

Subsection (c) authorizes the Secretary to suspend any decision of the Board with respect to management of the Preserve if the Secretary finds that an action or decision is clearly inconsistent with the Act. This subsection also prohibits the Secretary from delegating this authority. Finally, this subsection requires the Secretary to notify the Board and the appropriate Committees of Congress if such an action is taken.

Subsection (d) gives the Secretary access to the Preserve at all times.

Section 110(a) provides that the Valles Caldera Trust will terminate at the end of the twentieth full fiscal year following the acquisition of the Baca Ranch by the Federal Government.

Subsection (b) provides for various opportunities to review the management of the Board and to make recommendations for additional improvements and appropriations. At the end of the eighteenth full fiscal year, this subsection requires the Board to submit recommendations to the Secretary on whether the Trust should be extended or terminated. In addition, this subsection states that the Secretary will have the opportunity to comment on the recommendations.

Subsection (c) provides that, in the event the Trust terminates, the Secretary shall assume all management and administration of the Preserve and that it is to be managed as part of the Santa Fe National Forest.

Subsection (d) provides that, in the event of termination of the Trust, the assets of the Trust shall be transferred to the Secretary

to be available, without further appropriation, for the management of the Preserve.

Subsection (e) states that, in the event of termination of the Trust, the Secretary shall assume responsibility for monies in the Valles Caldera Fund.

Section 111(a) authorizes to be appropriated such funds as are necessary to carry out the purposes of this Title for 15 full fiscal years after the date of acquisition of the Baca Ranch.

Subsection (b) requires the Trust to submit a plan to Congress which includes a schedule of annual decreasing appropriated funds that will achieve the financially self sustaining operation of the Trust.

Section 112(a) requires the General Accounting Office (GAO) to submit an interim report to Congress three years after assumption of management by the Trust.

Subsection (b) directs GAO to complete a second report seven years after the assumption of management by the Trust.

## *Title II*

Section 201 contains the short title.

Section 202 presents the findings.

Section 203 defines terms used in the title.

Section 204 directs the Secretaries of the Interior and Agriculture to establish a procedure for the identification and prioritization of inholdings within specified Federal conservation units for which landowners have indicated a willingness to sell.

Subsection (a) directs the Secretary of the Interior to establish a program, using funds made available under this Title, to complete administrative requirements for the sale and exchange of lands identified for disposal under approved land use plans in existence on the date of enactment of this Act.

It is the Committee's intent that the Bureau of Land Management will ensure that existing rights of access to either public or private land across tracts of public land are not diminished when any such land is conveyed out of Federal ownership.

Subsection (b) defines the procedures to be used in the sale of surplus lands and exemptions.

Subsection (c) & (d) directs the Secretary of the Interior to report on activities pursuant to this Title and specifies that authorities under Section 205 expire 10 years after date of enactment.

Section 206(a) directs that the funds collected pursuant to this title from sale of land, except that which is paid to state's under existing law, be deposited in a special account in the Treasury of the United States.

Subsection (b) specifies that funds in the special account will be available to the Secretaries without further appropriation.

Subsection (c) requires that funds generated pursuant to this title be allocated in the following manner: eighty percent must be spent to purchase inholdings or non-Federal land containing exceptional resources that are adjacent to Federally designated areas; and not more than twenty percent can be spent for administrative purposes. In addition, this subsection requires that not less than eighty percent of the funds, in excess of the amount used for administrative purposes, be spent within the State in which the funds

were generated. Finally, this subsection authorizes the Secretaries to develop a procedure for prioritizing acquisitions pursuant to this title and identifies a list of requirements that must be met for such acquisitions.

Subsection (d) prohibits acquisition of lands containing hazardous waste or which would pose difficulties in management.

Subsection (e) specifies that funds collected under this title shall supplement funds appropriated pursuant to the Land and Water Conservation Fund Act.

Subsection (f) states that the upon termination fund shall be closed and any proceeds be transferred into the Land and Water Conservation Fund.

Section 207 specifies that this title shall not effect other Federal authorities to acquire land, the Santini-Burton Act, the Southern Nevada Public Land Management Act of 1998, or existing authorities to execute exchanges.

#### COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 11, 2000.*

Hon. FRANK H. MURKOWSKI,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1892, a bill to authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and of other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Victoria Heid Hall (for the state and local impact).

Sincerely,

DAN L. CRIPPEN.

Enclosure.

*S. 1892—A bill to authorize the acquisition of the Valles Caldera, to provide for an effective land and wildlife management program for this resource within the Department of Agriculture, and for other purposes*

Summary: Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 1892 would cost the federal government between \$6 million and \$10 million over the next five years. S. 1892 would also affect direct spending; therefore pay-as-you-go procedures would apply. CBO estimates that enacting this bill would reduce net direct spending by about \$1 million over the 2001–2005 period, but would increase net direct spending by about \$15 million over the 2001–2010 period.

S. 1892 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal gov-

ernments. The bill could benefit states and the Pueblo of Santa Clara.

Major provisions of the bill: Title I would authorize the acquisition of the Baca Ranch, a 94,761-acre property in New Mexico. This title also would:

- Establish, upon acquisition of the ranch, the Valles Caldera National Preserve as a unit of the National Forest System;
- Establish the Valles Caldera trust, board of trustees, and fund for administration of the preserve;
- Allow the Forest Service and the Valles Caldera trust (a federal government entity) to collect and spend donations, recreation fees and other charges for use of the ranch; and
- Authorize the appropriation of whatever sums are necessary to operate the ranch over the next 15 years.

Title II would authorize a 10-year program to allow the Secretary of the Interior and the Secretary of Agriculture to sell certain federal lands identified for disposal and use the net proceeds to acquire nonfederal lands.

Estimated cost to the Federal Government: The estimated impact of S. 1892 on direct spending is shown in the following table. In addition, CBO estimates that implementing S. 1892 would cost \$6 million to \$10 million over the 2001–2005 period, subject to appropriation of the necessary funds, to operate the ranch and build a visitors’ center. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
CHANGES IN DIRECT SPENDING					
Additional Receipts From Sale of Federal Lands:					
Estimated Budget Authority .....	-2	-3	-5	-8	-9
Estimated Outlays .....	-2	-3	-5	-8	-9
Increase in Direct Spending:					
Estimated Budget Authority .....	1	1	6	8	10
Estimated Outlays .....	1	1	6	8	10
Net Change in Direct Spending:					
Estimated Budget Authority .....	-1	-2	1	0	1
Estimated Outlays .....	-1	-2	1	0	1

**Basis of Estimate:** For purposes of this estimate, CBO assumes that S. 1892 will be enacted before the end of fiscal year 2000. Estimates for the cost of title I are based on information provided by the Forest Service and the current manager of the Baca Ranch. Estimates for the cost of title II are based on information from the Bureau of Land Management (BLM).

*Direct spending*

Title I would authorize the forest Service and the Valles Caldera trust to collect and spend donations and fees from the use of the ranch. CBO estimates that net direct spending in each fiscal year as a result of this provision would not be significant. Most of this spending would be to manage grazing, hunting, and other public uses of the land, which we estimate would cost about \$2 million annually. This amount would be offset by grazing, hunting, and recre-

ation fees, most of which the Forest Service or the trust would begin collecting immediately.

Under current law, net receipts of about \$1.5 million annually from the sale of certain public land administered by the Departments of Agriculture and the Interior are deposited in the Treasury and are unavailable for spending without appropriation. Title II would authorize BLM and the Forest Service to retain those net proceeds and spend them to acquire nonfederal lands within or adjacent to federal property over the next 10 years. Based on information from BLM, CBO expects that BLM land sales would increase under this legislation, generating about \$27 million in additional offsetting receipts over the 2001–2005 period. Those sales receipts would be largely offset by a corresponding increase in direct spending of \$26 million over the same period to purchase new lands. Over the next 10 years, CBO estimates that this provision would result in additional net direct spending of about \$15 million because it would allow spending of land sale receipts expected under current law.

*Spending subject to appropriation*

CBO estimates that the Forest Service would operate the new preserve at a cost of about \$1 million annually including payments to local governments in lieu of property taxes. We expect that the agency also would purchase the subsurface rights to this property, construct visitor facilities, and upgrade some roads. We estimate that these costs would be between \$1 million and \$5 million over the next few years, depending on the level of visitor facilities provided and the final appraisal of subsurface interests. We estimate that purchase of the ranch would not have any additional cost beyond the \$101 million already appropriated for that purpose in 1999.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays .....	0	-01	-2	1	0	1	2	3	3	4	4
Changes in receipts .....											Not applicable

Estimated impact on state, local, and tribal governments: S. 1892 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Title I would authorize the Secretary of Agriculture to assign to the Pueblo of Santa Clara rights to purchase a portion of the Baca Ranch from the current owners. The portions of the ranch assigned would be by the annual agreement of the Secretary and the Pueblo. Lands acquired by the Pueblo would be deemed transferred into trust in the name of the United States for the benefit of the Pueblo

and declared part of the existing Santa Clara Indian Reservation. Any acquisitions by the Pueblo of Santa Clara would be voluntary.

CBO estimates that enacting title II would increase federal payments to states by a total of about \$1 million over the 2001–2005 period. Under current law, states receive a percentage of the proceeds from certain land sold within their boundaries. Enacting title II would likely increase the amount of federal land sold, thereby benefitting the states receiving a portion of the proceeds.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Deborah Reis and Megan Carroll. Impact on State, Local, and Tribal Governments: Victoria Heid Hall. Impact on the Private Sector: Keith Mattrick.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1892.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1892, as ordered reported.

#### EXECUTIVE COMMUNICATIONS

On March 10, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Department of Interior, Department of Agriculture and the Office of Management and Budget setting forth Executive agency recommendations on S. 1892. These reports had not been received at the time the report on S. 1892 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Forest Service and Bureau of Land Management at the Subcommittee hearing follows:

#### STATEMENT OF JACK CRAVEN, DIRECTOR OF LANDS, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee: Thank you for inviting us here today to discuss the valuation of the Baca Ranch in New Mexico. I am Jack Craven, Director of Lands for the Forest Service, and I am accompanied today by Paul Tittman, Chief Appraiser for the Forest Service.

In our testimony today, we will describe for you the Federal land appraisal process, including the laws and standards that we apply, and then show how that process was applied to our valuation of the Baca Ranch. We will show

you the factors considered in the valuation of the Baca Ranch, and why the purchase price of \$101 million is the fair market value of the land. Finally, we will address some of the issues raised by the General Accounting Office audit of the appraisal. At the conclusion of our testimony, we will be happy to respond to any questions that you may have.

#### LEGAL REQUIREMENTS FOR APPRAISALS

In the market place, land is valued using appraisals. This is true whether land is being valued by the Federal Government, by commercial banks, or potential buyers and sellers of property. An appraisal is a document, prepared in accordance with accepted standards, which examines the attributes of property affecting its value in order to determine its "fair market value." Simply stated, the fair market value of land is the amount of cash that a willing buyer would pay a willing seller in the open market.<sup>1</sup>

Over 19 Federal agencies acquire land as part of their programs and they all use the same appraisal techniques. Federal agencies acquire land for many purposes, including the construction of dams and reservoirs, highways, airports, government buildings and facilities, as well as land conservation. When the Federal Government appraises land, there are substantive and procedural requirements of Federal law, as well as accepted professional appraisal standards, which apply in establishing fair market value for all Federal land acquisitions.

In 1970, Congress enacted the Uniform Relocation Assistance and Real Property Acquisition Policies Act,<sup>2</sup> better known as Public Law 91-646, to assure that all Federal real estate acquisitions follow consistent and fair policies and procedures. This statute requires that Federal agencies offer to pay landowners the appraised fair market value of land. Not only do appraisals benefit the Federal buyer and the American taxpayer by assuring that the government does not pay too much for a property, they also benefit the seller by assuming the payment of fair and just compensation.

The Federal Government actually adopted appraisal standards in 1963 when the Attorney General convened the Interagency Land Acquisition Conference composed of representatives of Federal land purchasing agencies. Under the auspices of the Conference, the Uniform Appraisal Standards for Federal Land Acquisitions were first published in 1972 (hereafter referred to as "Federal Standards"). These Federal Standards, which have twice been revised and updated, are well accepted in the professional

<sup>1</sup> "Fair market value" is defined in the Uniform Appraisal Standards for Federal Land Acquisitions (herein "Federal Standards") as, "the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy." Federal Standards, p. 4.

<sup>2</sup> 42 U.S.C. §§ 4601, et seq.

appraisal community as well as the Federal courts. By regulations, the Federal Standards have been adopted by all Federal land acquiring agencies. Often, Federal legislation requires appraisals to be performed in conformity with the Federal Standards, such as the pending legislation, S. 1892, which would authorize the acquisition of the Baca Ranch.<sup>3</sup>

#### APPRAISAL REQUIREMENTS

There are some fundamental requirements for any appraisal. First, it has to be prepared by a qualified appraiser who is impartial and experienced at valuing the kind of properties being appraised. Good judgment based on experience and personal knowledge of the properties being appraised are essential because the appraisal process has subjective elements, such as comparing two or more distinct properties and attempting to ascertain the elements by which they would differ in value.<sup>4</sup>

A second requirement of a proper appraisal is that it must assess fair market value utilizing one or more accepted methodologies. Without getting into the various valuation approaches,<sup>5</sup> most agree that the appropriate methodology for appraising the Baca Ranch is the comparable sales approach. A comparable sales looks at arm's length transactions in lands in the vicinity of and comparable to the land being appraised. The Federal Standards note that elements for determining comparable sales include property rights conveyed,<sup>6</sup> financing terms, conditions of sale, market conditions, location and physical characteristics.<sup>7</sup> We will have more to say about comparable sales in a moment.

#### THE APPRAISERS CHOSEN TO APPRAISE THE BACA RANCH

From the outset of negotiations with the owners of the Baca Ranch, the Dunigan Family, the Forest Service made it clear that it was required by law to offer the appraised

<sup>3</sup>S. 1892, (106th Cong., 1st Sess) at section 104(a) states: "The acquisition . . . [of the Baca Ranch] shall be based on an appraisal done in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions . . . and such purchase shall be on a willing seller basis . . ."

<sup>4</sup>The Federal Standards state: "[An appraiser] must exercise sound judgment based on known pertinent facts and circumstances and it is their responsibility to obtain knowledge of all pertinent facts and circumstances which can be acquired with diligent inquiry and search. They must weigh and consider the relevant facts with good judgment and make their decision, entirely on their own, in a sound professional manner, completely unbiased by any consideration favoring either the owner or the government. The appraisal report should be documented and supported so as to convince an impartial reader of the soundness of the appraiser's estimates, within the limits of integrity, judgment and ethics." Federal Standards at section C-2, p. 89.

<sup>5</sup>There are basically three accepted valuation approaches: the comparative sales approach, which estimates a property's value by comparing it with comparable properties that have been recently sold; the income approach, which estimates a property's value by applying a capitalization rate to its potential net income; and the cost approach, which estimates a property's value by adding the estimated value of the land to the current cost of constructing replacements for any improvements (such as buildings) less depreciation on those improvements.

<sup>6</sup>Property rights refer to the various interests in land which may include rights of access, water rights, minerals, and other elements that constitute title to land. When comparing sales of real property, the appraiser must examine what interests in land were conveyed. For example, two properties may not be comparable if one includes mineral rights and the other does not.

<sup>7</sup>Federal Standards, pp. 11-12.

fair market value for the property. There are three means by which a property can be appraised for acquisition by a Federal Agency. The first option is for the agency to prepare an in-house appraisal using its own staff appraiser. The second option is for the agency to contract with an independent appraiser. The third option is for the property owner to contract with an independent appraiser. All three options are frequently used by Federal Agencies. However, no matter which option is utilized, the resulting appraisal must be prepared in conformity with the Federal Standards, and must ultimately be approved for agency use by a qualified government review appraiser.

In the case of the Baca Ranch, the Dunigans had concerns over proprietary and confidential business information. Therefore, they elected to contract for their own appraisal to be done by the appraisal firm of Van Court and Co. of Denver, Colorado. The Van Courts are very experienced appraisers and hold prominent offices in national appraisal organizations, and are qualified and licensed to appraise properties in New Mexico.

Prior to the commencement of the appraisal work, the appraisers for both the Dunigans and the Forest Service met and agreed on the application of the Federal Standards and the appraisal methodology to be used. When the Van Courts completed their appraisal, it was submitted to the Forest Service for review by two Forest Service review appraisers, Paul Tittman, Chief Appraiser, and Gerald Sanchez, Regional Appraiser. As noted herein the Forest Service review found that the Van Courts' appraisal met the Federal Standards, and the appraisal was approved for Forest Service use. The appraised fair market value of the Baca Ranch was established at \$101 million.

#### THE VAN COURT APPRAISAL OF THE BACA RANCH

In order for their appraisal to meet the Federal Standards, the Van Courts had to make various analyses and determinations which must be clearly documented. We will highlight the more significant issues which were addressed in the appraisal, and provide a summary of the findings and conclusions.

##### *1. Determination of the highest and best use*

In order to ascertain what a buyer would be willing to pay for a property, the appraiser first consider its "highest and best use". A property's "highest and best use" is the use that is physically possible, legally permissible, financially feasible and, under current market conditions, would offer the maximum profitability for a likely buyer.<sup>8</sup> Ordinarily, the highest and best use is what the property is being used for at the time of the appraisal. In the case of the Baca Ranch, the appraiser, determined that the highest and best use would be its existing multi-use regime for

<sup>8</sup> Federal Standards, Part A-3, p. 8, et seq.

ranching, private accommodation, and outfitting (a “trophy ranch”).

A trophy ranch is a premium property available to only the wealthiest of buyers who can afford to enjoy the amenities of a property without necessarily deriving sufficient income from it to offset their investment or operating costs. These ranch properties appeal to an affluent segment of society who have exceptional buyer power and a desire for exclusivity and seclusion with a ranch having a high degree of “ambiance”.

Trophy ranches come in a wide variety of sizes, and generally stand out as unusually attractive high quality properties within a given market area. Prices for this class of property are generally at the top of the market reflecting the relative quality of this category of property, and aesthetically they are far superior to the common ranch typically found in rural America.

The Van Courts determined the highest and best use of the Baca Ranch to be a trophy ranch based on sales and uses of similar large ranch properties in the west. Typically, the utilization of the timber and other resources of these kinds of properties does not justify their high price as a buyer would never be able to recoup his investment. Unlike the Baca Ranch, some of these properties do not readily lend themselves to subdivision and development due to their isolation, lack of infrastructure, and the costs and time of marketing. The value of a trophy ranch is in its natural amenities—in a word, “uniqueness.”

## *2. The comparable sale approach to valuation*

The Van Courts used the comparable sales approach to valuing the Baca Ranch because that approach is most appropriate for a “trophy ranch” used primarily for recreation and which produces relatively little income and has relatively few improvements.<sup>9</sup> Comparable sales is also the preferred approach under the Federal Standards because of its proven reliability when there are sufficient market data available. A comparable sale for purposes of this appraisal is not just the sale of any large ranch, but it is rather among those arms-length transactions involving other ranches with large acreages having similarities to the Baca. Since all such ranch properties are unique, they may have similarities in some aspects and not others. The professional judgment of a qualified appraiser is necessary to assess these similarities.

The comparable sales approach is procedurally complicated,<sup>10</sup> but conceptually simple. If you are valuing a

<sup>9</sup>The appraiser also considered the income approach in assessing the value of the Baca, but chose not to rely upon it because it would not be a valid approach under Federal Standards for a trophy ranch. While the income potential for a property is often an essential element to ascertaining its value, with a trophy ranch like the Baca, reliance on such an analysis can severely distort the value and produce an unreliable result. The value of a trophy ranch is in its uniqueness and other values important to the buyer such as scenic qualities, wildlife, and isolated location, not in its income potential from minerals, timber, grazing, or similar uses.

<sup>10</sup>Federal appraisal standards require, among other things, that appraisers collect, verify, analyze, and reconcile available data; identify and consider appropriate market information; use

single family home in a community, you look to sales of homes with similarities to the property you are valuing. Thus, comparable sales would be other single family homes, of equivalent size and construction, located in similar residential neighborhoods. The job of the appraiser is to examine, in person, those properties which are most similar and ascertain the factors by which the subject property might bring a higher or lower price on the open market.

### 3. *Criteria for comparability*

To appraise a trophy ranch like the Baca, the Van Courts looked at the sales of large acreage ranch properties in New Mexico and neighboring states. Among the various factors considered were the changes in price of these properties over a given period of time. Older sales have to be adjusted to account for market fluctuations over time. Other considerations include the relationship of size to price, the availability of water sufficient to support the highest and best use of the properties, the quality of the vegetative cover, and the contribution of any structural or resource related improvements. Also considered were the properties' aesthetics and viewsheds and last, but not least, the quality of access to and within the properties.

The Federal Standards require that six criteria have to be analyzed in a comparable sale analysis:

- *Property rights:* The property rights conveyed in a transaction must be similar to the interest being appraised (e.g. fee simple title compared with fee simple title).
- *Financial terms:* The financial terms of a transaction must be similar. For example, a cash sale might not be treated as completely comparable to a sale where by the seller finances the sale with a mortgage.
- *Conditions of Sale:* The term and conditions under which a property is sold affects comparability. A sale where the seller is free not to sell would compare differently with a distress sale where the owner was compelled to sell.
- *Market conditions:* The demand and competition surrounding sales needs to be similar.
- *Location:* The physical location of properties within a particular market area reflects similar market conditions. With the Baca, the location of other sale properties within northern New Mexico would be more comparable than sales located in far removed states.
- *Physical characteristics:* Properties have to be compared on the basis of physical characteristics such as vegetative cover, topography, waters, and access.

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all pertinent information in developing the appraised value; and report their analyses, opinions, and conclusions clearly and accurately in a manner that is not misleading and that contains sufficient information to allow users of the report to understand it properly. One of the jobs of an appraiser is to use his professional judgment to ascertain how the differences in properties might affect their respective values. This is determined by site visits to the subject property and those of comparability.

#### *4. Examination of properties for possible comparability*

In the course of appraising the Baca Ranch, the Van Courts visited not only the Baca Ranch, but also made aerial and on-the-ground visits to all of the recent large ranch sales within the immediate competitive market area (northern New Mexico and southern Colorado), as well as Montana, central Colorado, and eastern Utah. Such visits are essential for an appraiser to determine whether other sales are, in fact, actually comparable. As a part of this process, value issues were discussed with known buyers and sellers, as well as other knowledgeable appraisers who have been active in valuing similar properties.

#### *5. The price/size relationship*

The “price/size” relationship does not apply in determining the value of the Baca Ranch. The size-price issue relates to the price paid per acre, and is based on a presumption that the values on a per-acre basis decrease with the increased size of properties. For example, the per-acre value of a five-acre tract is generally much higher than that of a hundred-acre tract.

In comparing rural and relatively undeveloped properties, the appraiser may adjust the relative sales prices between properties of unequal size. Thus, when appraising a large property, the appraiser may tend to discount the per acre sale price of an otherwise comparable smaller property to account for the price size ratio. However, the price size ratio is less important in comparing larger sized properties and is generally irrelevant in properties exceeding 10,000 acres. Thus, in the case of the Baca, “bigger” did not result in a lower price per acre when compared to the sale of other large tracts even if those other large tracts were many thousands of acres smaller.

In New Mexico, the price/size relationship has been extensively studied. For example, the New Mexico State University study entitled, “New Mexico Ranch Values: Ranval 2000”, by L. Allen Torell, Ira Pearson and Scott Bailey, correlates the relationship of size to price in the sales of large ranch properties in New Mexico. The findings show that, for properties of approximately 10,000 acres and more, size has no measurable influence on the price per acre.

#### *6. Analysis of sales for comparability*

Determining comparability among properties is a process of winnowing down many properties being considered to those few which share attributes of the property being appraised based on the six criteria referenced above.

The Van Courts initially considered 50 sales within the Intermountain West. The initial 50 sales were then narrowed to 16, constituting the most similar sales that occurred within the past 5 years. The Van Courts then analyzed and compared these 16 sales directly to the Baca Ranch and finally focused on the 5 sales determined to be

the most comparable to the Baca Ranch. Four of these sales are located in northern New Mexico, and one was immediately north of the New Mexico Colorado border. These 5 sales were then narrowed down to two sales as having the greatest similarity, and hence comparability, to the Baca Ranch. These two sales are the China Ranch and the Spirit Bull Ranch.<sup>11</sup>

Considering the six factors of comparability, it is clear how the Chama Ranch and Spirit Bull Ranch properties are the most comparable to the Baca Ranch.

- *Property rights:* Both the Chama and Spirit Bull ranches were fee simple transactions including water rights.

- *Financial terms:* Both the Chama and Spirit Bull transactions took place on terms equivalent to cash.

- *Conditions of Sale:* The Chama and Spirit Bull transactions were exposed to the competitive marketplace.

- *Market conditions:* Both the Chama and Spirit Bull transactions took place under similar market conditions where a competitive interest in trophy ranch class properties was demonstrated.

- *Location:* Both Chama and Spirit Bull are located in northern New Mexico, with similar access, and with exposure to the same market conditions.

- *Physical characteristics:* Both the Chama and Spirit Bull properties have excellent viewsheds, water, forests, and recreational opportunities.

The Van Courts determined that, among the sales they examined, the Chama and Spirit Bull Ranches compared most closely and favorably to the Baca Ranch on these factors. Nonetheless, while the Chama and Spirit Bull Ranches share many similar characteristics with the Baca, they are similar and do not have its ecological and geological diversity.

The other sales were not deemed as sufficiently comparable to the Baca Ranch due to their locations, their having characteristics affecting value (such as title encumbrances), their not being in the vicinity of the Baca, or their being predominately agricultural in character and without the recreational attributes found on the Baca.

Among the 16 sales considered, one that was dismissed was the well-known 580,000-acre Vermejo Ranch. In that case, the price and terms of the transaction could not be verified by any reliable source that was a party to the transaction. This kind of verification is required by the Federal Standards. Further, the Vermejo Ranch is subject to significant outstanding mineral leases which would have made comparison to the Baca Ranch very difficult.

Another example of a non-comparable sale is the 90,000 acre tract in southern Colorado cited by the GAO as hav-

<sup>11</sup>The Chama Ranch sold in June, 1995, for \$25,000,000 or \$779 acre for 32,076 acres. Adjusted for time at 4% year, the price is \$880/acre as of September 1, 1998.

The Spirit Bull Ranch sold in March, 1998, for \$15,300,000 or \$1,368 acre for 11,184 acres. Adjusted for time at 4% year, the price is \$1,395/acre as of September 1, 1998.

ing sold recently for \$196 per acre. Although this property was similar in size to the Baca Ranch in New Mexico, it was not comparable because it did not include any of the mineral rights of the property. Without these rights, the property was not financially viable for development and, as a result, its sale was under distress. This illustrates why the appraiser has to look beyond mere size to the other major factors affecting price.

The Van Courts found the Chama Ranch and Spirit Bull Ranch as the most comparable to the Baca Ranch. The other three sales were not given further consideration because they were of largely agricultural properties.

Chama Ranch sold in June, 1995, for \$25,000,000 (or \$779 per acre) for 32.076 acres. Adjusted for time at 4% per year, the adjusted price of the Chama Ranch was approximately \$880 per acre as of September 1, 1998.

The Spirit Bull Ranch sold in March, 1998, for \$15,300,000 (or \$1,368 per acre) for 11,184 acres. Adjusted for time at 4% per year, the adjusted price for Spirit Bull Ranch was \$1,395 per acre as of September 1, 1998.

The Van Courts deemed the Chama Ranch and Spirit Bull Ranch to "bracket" the market of properties comparable to the Baca Ranch, that is, the Baca would fall somewhere between the values of these two comparable sales. The Van Courts' analysis concluded that the value of the Baca was more than the \$880 per acre ascribed to the Chama Ranch, but less than the \$1,395 per acre ascribed to the Spirit Bull Ranch. After various quantifications of variables, the appraiser found the Baca to be valued at \$1,061 per acre, which was multiplied and rounded to \$101 million for the entire property.

The Committee may be interested to know that Spirit Bull Ranch is under contract of sale. Since the completion of the appraisal, a buyer has contracted to purchase the Spirit Bull Ranch for \$25,500,000 which is \$2,280 per acre. This represents an annual appreciation rate of over 29% per annum or 2.43% per month! This rapid increase in value illustrates two important factors. First, it corroborates the fact that the price/size relationship is not a factor for this large acreage property. Second, it shows a continuing upward climb in the price of trophy ranch properties. While members of the Committee may draw their own conclusions from this sale, it certainly suggests an accelerating market for this class of property.

#### FEDERAL REVIEW OF THE BACA RANCH APPRAISAL

The appraisal by Van Court and Company was completed and submitted to the Forest Service for review in August, 1999. For several weeks, the Forest Service review appraisers analyzed its contents, often challenging points and requiring that the appraisers justify their data and analysis. This process necessitated revisions and refinements to the appraisal, as well as downward adjustments to the valuation.

To provide its review appraisers with a clear understanding of the general market for properties such as the Baca, the Forest Service had previously contracted for its own market survey. This survey provided an objective array of verified market data by which to review the appraisal. It defined the nature of recent ranch sales in the Intermountain West, and provided the overall range of sale prices for ranch properties. The survey did not differentiate between ranch properties purchased for their agricultural income and those purchased for recreational amenities.

The survey was not an appraisal and did not determine comparability among the properties evaluated. Rather, it simply provided a “snapshot” of the market for large rural property sales in the western United States. Thus, when the appraisal was submitted, the survey gave the Forest Service review appraisers a factual basis for review of the appraisal’s analysis and conclusions.

When the appraisal was finally approved by the Forest Service review appraisers, it approved a fair market valuation of the Baca Ranch at \$101 million, which is significantly less than the value originally submitted by the Van Courts.

RESPONSES TO THE REPORT OF THE GENERAL ACCOUNTING  
OFFICE

As the Committee is well aware, the Forest Service strongly disagrees with the analysis and conclusions of the GAO report dated March, 2000.<sup>12</sup> Nonetheless, GAO and the Forest Service appear to agree on many points.

- The appraisal prepared by Van Court & Company of Denver, Colorado, dated September 10, 1998, was prepared by qualified appraisers who are licensed to appraise property in the State of New Mexico.

- The Van Court appraisal satisfies all the requirements of the Uniform Appraisal Standards for Federal Land Acquisitions, and meets the requirements of Public Law 91-646.

- The Van Courts’ determination that the highest and best use of the Baca Ranch is as a multi-use regime for ranching, private accommodation, and outfitting (a “trophy ranch”) was agreed to by the Forest Service and not challenged by the GAO.

- The most appropriate and reliable approach to appraising the Baca Ranch is that of assessing comparable sales.

- The GAO auditors are not appraisers, and the Office did not appraise the Baca Ranch. Therefore, the GAO’s report was not an appraisal and it was not intended to be such.

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<sup>12</sup>“Federal Land Management: Land Acquisition Issues Related to the Baca Ranch Appraisal”, GAO/RCED-00-76.

However, we must emphasize that the only way to properly value land is through a complete appraisal. The GAO acknowledges that its consulting appraiser did not prepare an appraisal himself, nor did he visit the property or any comparable properties as is required for any valuation analysis compatible with the Federal Standards.<sup>13</sup> Therefore, GAO's conclusion that the Baca Ranch is worth less than the appraised value is not a conclusion upon which anyone can rely to determine value.

To substitute the GAO report for the federally approved appraisal, would call the entire, well-established federal appraisal process into question. However, it is clear you cannot use a report that is not an appraisal to overturn a Federally approved appraisal done by a qualified appraiser. This is particularly the case where both the GAO and its contract appraiser state that they have not appraised, or even seen, the subject property.

We will not here debate anew each of the contentions of the GAO. However, we will highlight what we believe to be the essential errors of its analysis.

### *1. Comparability*

Simply stated, GAO misapplies the concept of comparable sales as used in appraisals. You cannot array sixteen property sales based on a time adjusted sales price and use that as a basis for comparison. Nor does the price/size relationship apply to properties over 10,000 acres in size, yet GAO continues to assert its relevance notwithstanding expert analyses to the contrary.

The 16 sales that GAO analyzes on a size/price scale are simply not comparable. Each may have some elements of comparability with the Baca Ranch, but there is certainly no basis to compare them solely on the basis of acreage and a time adjusted sale price. Each of the 16 sales had different attributes such as timber, water, pasture, and similar resource values. They also differed on location, access to roads, and on the interests in land being conveyed, all being critical factors in determining comparability.

For example, GAO refers to the sale of a 90,000 acre tract in Colorado for \$196 per acre as a comparable sale to the Baca owing to its similar size.<sup>14</sup> However, that sale was examined by the appraiser and found to be a conveyance of surface rights only, and the sale was under duress since the landowner was unable to consolidate the various outstanding rights needed to develop the property. Therefore, it did not qualify as a comparable sale.

### *2. The uniqueness of the Baca Ranch*

GAO fails to accord the Baca Ranch any special value considerations based on uniqueness. Disregarding all accepted appraisal standards, but utilizing its "one size fits

<sup>13</sup>The Federal Standards require that the appraiser make a personal inspection of the property appraised. Federal Standards at section B-1, p. 65.

<sup>14</sup>GAO Report, p. 5.

all” approach to valuation, it was necessary for GAO to discount the uniqueness of the Baca Ranch.

Unique means “one of a kind.” It is a factor that profoundly affects the value of anything, particularly real estate. Yet uniqueness is hard to demonstrate on paper; that is why all appraisers are required to inspect the property they are appraising and to apply professional judgments based on those inspections. Had the GAO reviewer taken the offered opportunity to visit the Baca Ranch, he would have witnessed a sight compared favorably with Yellowstone National Park and similar national treasures.

The 95,000 acre Baca Ranch in northern New Mexico is a unique land area. No one in this room or in GAO can seriously doubt the significant scientific, cultural, historic, recreational, ecological, and scenic values. It is permanently protected from adverse development of the surrounding land since it is bounded by the Bandelier National Monument, the Jemez National Recreation Area, and the Santa Fe National Forest. All these resource values have been extensively studied and documented by the Forest Service.<sup>15</sup> Had GAO or its review appraiser evaluated these factors, the uniqueness of the Baca Ranch would be self evident.

### *3. Premium value versus premium price*

As we noted in our responses to GAO, uniqueness contributes to the premium value of the Baca Ranch. GAO confuses a premium price with a premium value. It concludes that the Government would be paying a “premium price” to acquire the Baca for \$101 million.

The Department of Agriculture takes a different view. When we pay \$101 million, we are paying the fair market value of a property that is special and which cannot be duplicated elsewhere in the market place. In other words, we are buying a property having premium value. Thus, the difference between a “premium price” and a “premium value” is much than semantic, it goes to the very heart of the opposite views of fair market value by this Department and the GAO.

### CONCLUSION

All agree, even GAO, that the appraisal for the Baca Ranch meets Federal Standards. We want to assure you that the review done by the Forest Service Chief and Regional Appraisals was fair, objective, and in conformance with federal standards. Clearly different people, even different appraisers, can reach differing conclusions of value as to any property. The Federal system for conducting and reviewing appraisals was intended to provide a uniform approach and standards so that we all—the Forest Service, the Congress, and the American people—would have con-

<sup>15</sup>The Forest Service has extensive knowledge of the Baca Ranch. In 1993, acting pursuant to Congressional direction in Public Law 101-556, the Forest Service prepared its Report on the Study of the Baca Location No. 1, which extensively analyzed the Ranch’s resources.

fidence that we are both paying fairly to sellers of property and yet not overpaying with taxpayer dollars.

We believe that the appraisal's valuation of \$101 million represents the fair market value. In purchasing the Baca Ranch for this amount, the United States would be paying a fair market value price for a premium property, a property so unique that it is widely considered one of the most spectacular natural and scenic areas of the nation still in private ownership.

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STATEMENT OF LARRY FINFER, ASSISTANT DIRECTOR,  
BUREAU OF LAND MANAGEMENT

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to testify on S. 1892, the Valles Caldera Preservation Act. S. 1892 contains two distinct Titles. Title I focuses primarily on the federal acquisition and subsequent management of the Vales Caldera, also referred to as the Baca Ranch. Title II, entitled "Federal Land Transaction Facilitation," describes a procedure for the sale of public lands which have been identified for disposal by the managing agency, the Bureau of Land Management (BLM). Title II also describes a process for the use of the receipts of those land sales, which are to be primarily directed to the purchase of private inholdings within certain federally designated areas. The BLM will defer to the testimony of the U.S. Forest Service in regard to Title I, as the majority of the land to be acquired will be managed by the Forest Service. Our comments today are directed toward Title II, which has direct impact on the Bureau of Land Management.

Title II is very similar to S. 1129, the Federal Land Transaction Facilitation Act, on which I testified before this committee on July 21, 1999. At that time, I stated that the BLM strongly supported the objective of the legislation. This continues to be the case. But as stated in July 1999, I will recommend some relatively minor amendments to assure effective implementation and to help meet land management objectives established under the Federal Land Policy and Management Act (FLPMA), often referred to as "BLM's Organic Act."

Throughout the west, the BLM manages a great deal of federal land that is intermingled with private lands. As a result of the scattered and checkerboard ownership, the management of some of these federal lands is difficult and uneconomical. Through the land use planning process required under the FLPMA, (P.L. 94-579), the Bureau has identified some of these lands as potentially available for disposal. However, the sale authority granted the BLM pursuant to FLPMA has not been widely used for a number of reasons, including staffing and disposition of sales receipts. As a result, much of this land is still under federal management. Despite a relatively small history of land sales, the BLM has made progress toward improving

management efficiency by consolidating land ownership through exchanges, purchases, and negotiating agreements with other land management agencies. Title II of S. 1892 will provide another significant tool to assist us in this consolidation, where appropriate.

The BLM is rapidly gaining invaluable experience in the disposal of public lands. The Southern Nevada Public Land Management Act of 1998 (PL 105-263), has helped to refine and improve our land sales process. Similar to Title II, the Southern Nevada Act provided for the sale of public land, but the implementation was limited to the Las Vegas valley.

As noted in my previous testimony on S. 1129, one of our most serious concerns with this proposed legislation is the extent of its emphasis on acquisition of inholdings. Although acquisition of inholdings is a legitimate and desirable goal, dedicating 80% of the funds available for acquisition to "inholdings" is undesirable and could limit one of the potentially valuable uses of the funds.

The FLPMA contains criteria for determining which public lands are suitable for disposal and directs that these lands be identified through the land use planning process. Title II is consistent with this direction. However, section 205 (a) would limit the scope of land sales to those lands identified for disposal as of the date of enactment. Congress, through Report language accompanying the FY 2000 Interior and Related Agencies Appropriations bill, acknowledged BLM's position that many of our current land use plans need to be updated. The President's Budget request for FY 2001 contains significant funding for this updating. For example, in New Mexico, an anticipated update of the 1988 Farmington Resource Management Plan (RMP) could identify up to 20,000 acres of land for disposal adjacent to Aztec, Bloomfield, and Farmington. The 1988 RMP also identified lands for disposal which would now be recommended for retention based on new environmental considerations. We would recommend that Section 205 be amended to allow for the use of any updated BLM Resource Management Plan. We believe this amendment would help us better assist communities as they consider both growth opportunities and the preservation of open spaces that are basic to the Western lifestyle.

Our testimony on S. 1129 stated our strong opposition to any efforts to establish a yearly quota or acreage goal for disposal. We are pleased that Title II of S. 1892 reflects this position. Past testimony also supported the dedication of land sales receipts to acquisition within a special fund not subject to further appropriation. We are pleased that title II supports this position as well.

Other recommendations for specific amendments to Title II language, many of which were included in our testimony on S. 1129, include:

Section 203 (2) *Federally Designated Area*: For clarification, the cross reference to section 103 of the FLPMA

should be changed to section 103(o). Similarly, the definition of “Exceptional Resource” contained in Title II should be expanded to consider a wider variety of values for the use of sale receipts, including fish and wildlife resources or other natural systems and processes. Such language is consistent with the idea of special emphasis areas identified in Section 103 of the FLPMA.

Section 203 (3) *Inholding*: This special designation definition should be expanded to include “inholdings” within large tracts of public land administered by the BLM that do not have special designation. This might be done by identifying lands within BLM resource management plan boundaries as federally designated areas. In our testimony on S. 1129 we provided examples of how local communities throughout the West are looking to Federal lands to be used in concert with local and regional habitat conservation planning. One example provided was in San Diego County, where consolidation of a large block of Federal lands—with the support of local officials—will allow the county to approve continued economic development on other private lands. This legislation should facilitate such collaborative efforts. The definition should also be expanded to include inholdings within BLM Wilderness Study Areas, as these are areas which have been proposed for special consideration through a public land use planning process.

Section 204 (a)(1) *In General*: The identification procedure for inholdings is unclear and need to be clarified. The primary focus of land acquisition should continue to be on the importance of resource values to be acquired by the public. If it is expected that agencies will identify all “inholdings,” as defined, and also whether the owner is a willing seller, the task would be immense and costly. Further, it would be difficult to manage given that many sellers will reassess their willingness to sell over the life of the program. Accordingly the information could be outdated as soon as it is gathered. We would prefer to carry a flexible, visible and public process whereby we could identify willing sellers and determine how acquisition may resolve management issues.

Section 204(a)(2) *In General* and Section 206(c)(3) *Priority*: It could be difficult to establish the date on which the land became an “inholding” and the date the “willing seller” acquired the property. The research to document thousands of individual private parcels that qualify under this bill will be arduous. Each seller would be required to provide documentation to justify the purchase date, and many of them would not willingly provide this information. The BLM recommends instead that a public forum be conducted to determine interest in this program. Each interested owner could request placement on a list, however, the individual agencies would continue to decide on the highest priority areas for acquisition.

Sections 206(b) *Availability* and 206(c) *Priority* We believe it would be prudent to designate a lead agency for management of the Federal Land Disposal Account to avoid redundant accounting and tracking procedures. The BLM is the logical choice for designation as the lead because the lands to be sold are currently under BLM management. Similar direction was included in the Southern Nevada Lands Act as the law also provides a special account which is available for use by a number of Federal Agencies. The BLM, in coordination with the other Federal agencies, is currently finalizing the process for the management of the Southern Nevada Fund, and this process can be easily adapted to the management of the Federal Land Disposal Account.

Section 206(c) *Federal Land Disposal Account*: As discussed earlier, we believe the definition of “exceptional resources” should be expanded. We also believe the inclusion of “adjacent to federally designated areas” may not be the most effective means to ensure protection of such exceptionally sensitive lands. Title II already contains a prohibition on the purchase of lands which would be uneconomical to manage. Given this safeguard, expanded authority for purchase of exceptional resource lands not adjacent to federally designated areas, with emphasis on inholdings, would be willing to discuss a cap on the amount of money which could be spent annually on the purchase of lands other than inholdings.

Section 206(c)(2)(C) *Administrative and Other Expenses*: Based on our experience with the Southern Nevada Public Land Management Act, we suggest the inclusion of this statement: “The reimbursement of costs incurred by BLM in implementation of this Act shall include not only the direct costs for sales or exchanges but also other BLM administrative costs. Other administrative costs include those expenditures for establishing and administering the Federal Lands Disposal Account under the Act, developing implementation procedures, and consultation with legal counsel.” Such clarifying language, applicable to the Southern Nevada Act, was contained in Report language accompanying the FY 2000 Interior and Related Agencies Appropriations bill.

Section 206(f) *Termination*, contains a cross reference to section 5. This reference should be changed to section 205.

We appreciate the cooperative working relationship that we have had with the Committee and Senator Domenici on this legislation. We look forward to continuing that relationships to accomplish our common goals.

That concludes my testimony. I would be glad to respond to any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1892 as reported.

